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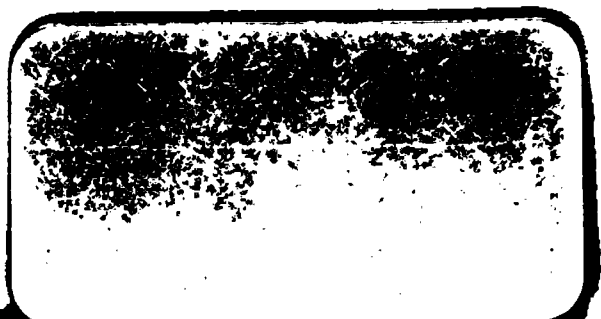
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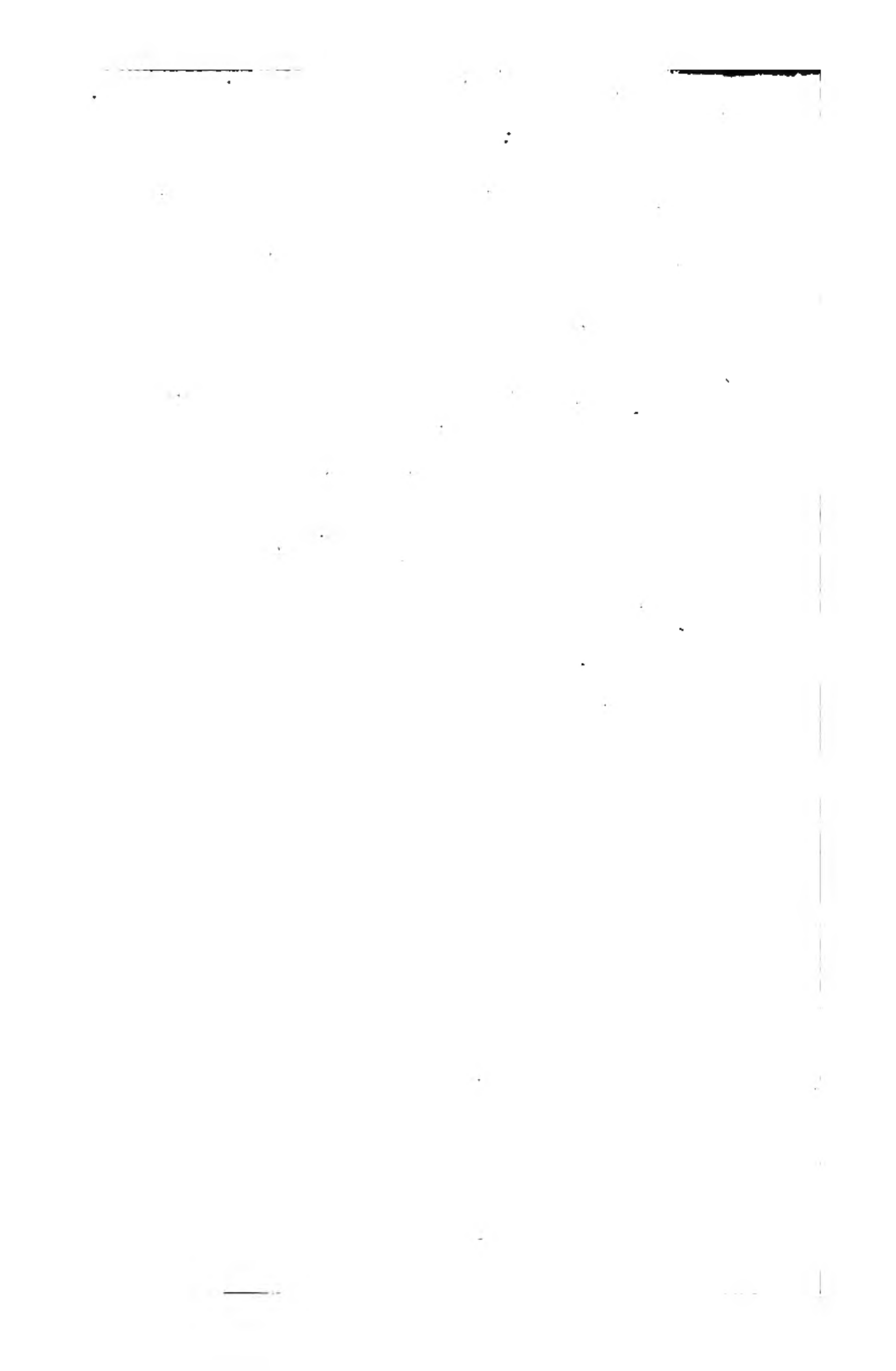
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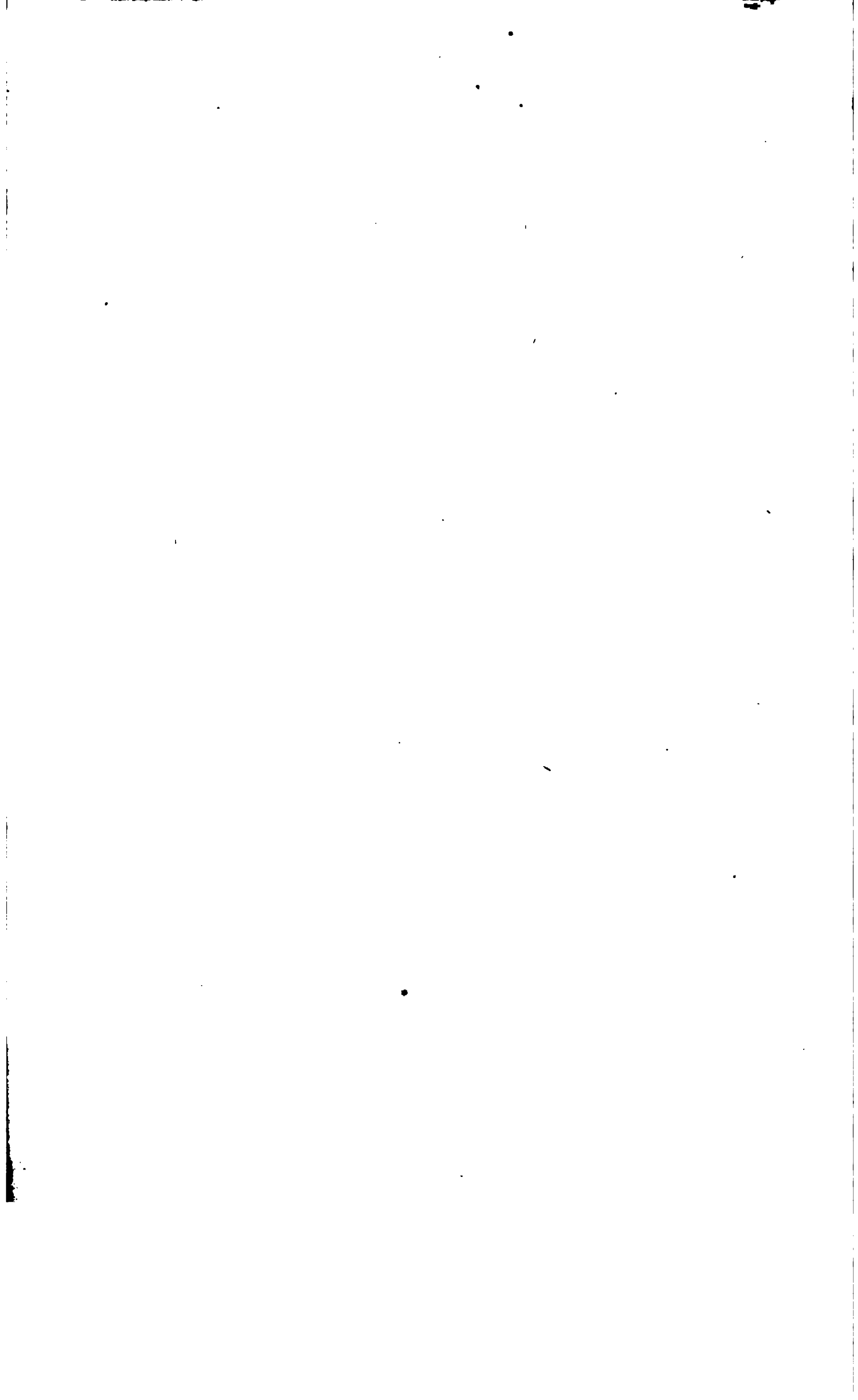












**A**  
**SYSTEM**  
**OF THE**  
**FORMS OF DEEDS**  
**USED IN SCOTLAND.**

---

**By ROBERT BELL,**  
**CLERK TO THE SIGNET,**  
**LECTURER ON CONVEYANCING, APPOINTED BY THE**  
**SOCIETY OF CLERKS TO THE SIGNET.**

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## BONDS.

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### II. *Of the* CONSTITUTION, ASSIGNATION, *and* DISCHARGE *of* PERSONAL OBLI- GATION.

IN the two preceding volumes, I have given the forms by which a right in land, or burdens over it, are constituted, transferred *inter vivos*, or discharged; and I am now to explain the forms by which personal obligation may be constituted, assigned, or discharged. It is under these heads I hope to include all that relates to the original constitution of rights heritable or moveable, and to prepare for the due consideration of that class of forms, by which property is conveyed from the dead to the living, voluntarily or legally.

Moveable rights will be arranged under the following heads: 1. Of Personal Obligation: 2. Of the Assignment and Conveyance of Per-



sonal Obligation : 3. Of the Discharge of Personal Obligation : 4. Of Dispositions of Moveables : 5. Of Contracts.

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## CHAP. I. *Of PERSONAL OBLIGATION.*

This chapter will necessarily suffer a division into personal obligation arising from bonds, and personal obligation arising from bills, &c.

### Sect. 1. *Of Personal Obligation arising from Bonds.*

The moveable bond, is an obligation by a debtor to repay to his creditor, on a day specified, and under a fixed penalty, the sum borrowed, with interest from the time of receiving the money. We are so much familiarized with the terms of this deed, that we conceive them to be the natural result of the transaction ; and that the bond must always have been what it now is, as well as the foundation of our heritable securities : But this is a most erroneous view of the matter, since, of all these deeds, the

the common moveable bond was the last introduced into our practice.

By the influence of the Canon law, the taking of interest was held to be criminal; and the lending of money on interest (or, as it was then termed, on usury) was prohibited. It was to reconcile this absurd regulation with the wants of society, that the wadset and annualrent right were devised, by which interest might be derived from money, without infringing the letter of the law.

The wadset was apparently an exchange, by which the creditor received the use of the land for the use of money; and the annualrent right was a more direct purchase of a rent, payable from the land. But in none of them, as they were originally constituted, was there a stipulation for repayment of the money; they contained no evidence of the real nature of the transaction; and it was not till the old notions had passed away, that these deeds were furnished with a clause of requisition, and an obligation on the debtor to repay the money he had borrowed.

While the lending of money on interest was contrary to law, it is obvious that the moveable bond could not be received in practice;

yet there were, in practice, forms of obligation for enforcing the payment of money, though they never were made to include interest.

One of these forms of obligation is frequently taken notice of in our older decisions. It is there termed a ticket, and evidently was the forerunner of the modern moveable bond. It was thus expressed: ' I A. grant me to be  
' justly indebted to B. in the sum of 100/  
' Scots, which I bind and oblige me, my heirs,  
' successors and executors, to pay to the said B,  
' his heirs or assignees, or any other having his  
' order, and that against the       day of  
' next, under the penalty of thirty pounds  
' Scots in case of failure. In witness whereof,'  
&c. There was in this obligation no stipulation of interest; but there was a penalty: and it would appear from Balfour, p. 150, § 4, 5, that the penalty was demandable, wherever payment was delayed; so that it afforded a security for the regular payment of the money at the stipulated term, (which is probably all that was the object of the ticket); or it ensured a full indemnification to the creditor.

Another form, of this period, was the bond containing a pledge. This deed contained an obligation on the grantor to pay the sum against

a certain day ; and then, for the better security and more sure payment of the creditor, the pledge is delivered, ‘ so (as the style says) ‘ that in case of not thankful payment of the ‘ said sum of 120l. money foresaid, to the said ‘ B, and his foresaids, precisely at the said term ‘ of Martinmas next, appointed for payment ‘ thereof, it shall be leifome and lawful to them, ‘ immediately after the said term above specified, to change, away put, use and dispose ‘ upon the said old pieces of gold, delivered ~~to~~ <sup>to</sup> me ~~by~~ the said B, and weighing as said is, as ‘ their own proper gold, at their pleasure, in ‘ all time thereafter ; renouncing, by thir presents, all action or pursuit, competent to me ‘ or my foresaids, against the said B or his foresaids, thereanent, for ever.’ Such were the terms of the bond and pledge ; and as, in the ticket, the penalty secured the punctual performance of the obligation, so, in this form, the pledge must have operated with equal force ; and where the money remained unpaid after the term, the creditor would be secured in his interest, by claiming the penalty in the one case, or, in the other, by retaining the property of the pledge.

When, at last, interest might avowedly and  
A 3 legally

legally be charged, the form of the ticket was changed ; and an obligation to pay the interest from the time of receiving the money was added to it. But here a considerable difficulty arose, from the nature of the bond bearing interest ; for the opinions on this point were affected by the nature of the securities which had formerly been taken, that is, by the wadset and annualrent right ; and, in every case where the creditor indicated his intention of allowing the money to remain at interest for a tract of time, the debt was held to partake of the feudal nature of the original securities, and so to descend to the heir.

Still, there were two situations to which this presumption was inapplicable ; one was, the period previous to the term of payment in the bond ; the other was, after payment had been demanded. In the former case, it was presumed, that the money would be paid at the term of payment ; in the latter, the creditor had so far indicated his intention of recovering the money, that the presumption on which the heritable nature of the bond was founded, was, from the moment of the demand, inadmissible.

The first of these periods was precisely ascertained by the terms of the bond ; and, in order

order to fix the other with equal certainty, a clause of requisition was inserted, by which a requisition, under form of instrument, might be made, and, of course, the commencement of the latter period be ascertained with equal precision. We are therefore to conceive the common moveable bond, at its first introduction, as moveable from its date to the term of payment: from the term of payment till the date of the instrument of requisition, it was heritable; and, from the date of that instrument, it returned to its original state, and was held to be moveable.

But the bond did not always contain a clause of requisition; and the money might have been demanded at any time after the term of payment. This, as we learn from that great lawyer Sir Thomas Hope, (Minor Practics, tit. 3. § 2. of Moveable and Heritable Bonds), threw the decisions of the Court extremely loose on this point. He says, ‘ As to the distinction  
‘ between heritable and moveable bonds, it was  
‘ of old thus, viz. That a moveable bond was  
‘ that which was made to the creditor by simple bond, for payment of the money at a  
‘ term, with a penalty, and did not contain  
‘ obligation to infest in an annual rent; nor to

‘ pay annualrent to the creditor, as well not in-  
‘ feft as infeft: and an heritable bond was where  
‘ the debtor fold lands, or annualrent out of  
‘ his lands, under reverfion of the principal  
‘ fum, upon forty days’ warning, or mae or  
‘ fewer, as the party pleased. But now the  
‘ form of bonds is fo conceived, and the Lords  
‘ decide fo uncertainly, that it is exceedingly  
‘ hard to difcern the diftinction betwixt herita-  
‘ ble and moveable ; for, firft, the bonds are  
‘ now conceived bearing a claufe of annual-  
‘ rent, and after it a provifion that the creditor  
‘ fhall have power to crave his principal fum  
‘ at any time, without requifition, which con-  
‘ founds the nature of heritable and moveable  
‘ bonds ; for, in the beginning of the bonds,  
‘ they are conceived heritable, and, by a pofter-  
‘ rior claufe, the fame are made moveable, at  
‘ the pleasure of the creditor, without expreff-  
‘ ing any external act, to diftinguifh whether  
‘ it be heritable or moveable.

‘ Item, The Lords, in their decifions a-  
‘ gent this point, have been very uncertain ;  
‘ for fometimes they have found no bond to be  
‘ heritable unlefs it bear a claufe to infeft ; o-  
‘ therwife they found it heritable without a  
‘ claufe of infeftment, if it bear an obligation  
to

‘ to pay annualrent to the creditor, as well not  
‘ infest as infest ; and, lastly, they have found  
‘ it heritable, albeit it want both these clauses,  
‘ if it bore an obligation to pay annualrent.

‘ Item, Commonly the bonds which bear  
‘ obligation for payment of annualrent simply,  
‘ bear, in the first place, an obligation to pay  
‘ the principal sum at a certain term, or at the  
‘ pleasure of the creditor, and a penalty in case  
‘ of failzie ; whereupon it oft falls out to be  
‘ disputed, whether this bond be moveable or  
‘ heritable *ante eventum termini*, which falls  
‘ out, if the debtor or creditor die before the  
‘ term, or if the creditor be denounced rebel  
‘ before the term ; and, in thir cases, the Lords  
‘ have found that the same is moveable *ante ter-*  
‘ *minum* ; and, if the debtor dies *post terminum*,  
‘ the bond will be counted heritable *quoad* the  
‘ heirs of the debtor, although it may be move-  
‘ able *quoad creditorem*, if he died before the  
‘ term. On the other hand, if the creditor  
‘ died after the term, it will be heritable *quoad*  
‘ *eum et ejus hæredes* ; and yet may be move-  
‘ able *quoad debitorem*, if he died before the  
‘ term.’

We perceive, in this account of the bond,  
the contradictory notions which prevailed con-  
cerning



cerning it ; and it was not till the act 1641, that the point was cleared up. But that act being rescinded, with the other acts of the same period, it is by the act 1661, cap. 32, that this matter is at present regulated.

The act of the. Rebellious Parliament, in the 1641, proceeds on this preamble : That the provisions of law for younger children are scanty : That the generality of people, in lending their money, had no intention to disappoint their younger children : That the heir profits by their ignorance ; and that a number of orphans and fatherless children are disappointed of their natural portion, are brought to poverty and misery, and forced to become beggars, which is often found by pitiful experience : And therefore it enacts, That all contracts and bonds for sums of money, though bearing annualrent, shall pertain to the bairns, and nearest of kin. The act 1661, again, ‘ statutes  
‘ and ordains, That all contracts and obligations for sums of money payable to parties,  
‘ containing clauses for payment of annualrent  
‘ and profit, are and shall be holden and interpreted to be moveable bonds, except in the cases  
‘ following, viz. That they bear an express  
‘ obligation to invest, or that they be conceived  
‘ ed

‘ ed in favour of heirs and assignees, including  
 ‘ executors ; in either of which cases, ordains  
 ‘ the sums to be heritable, and to pertain to the  
 ‘ heir, otherways to be confirmed by the exe-  
 ‘ cutor, and to appertain to the nearest of kin,  
 ‘ according to the law of moveables ; declar-  
 ‘ ing that all such bonds, *quoad fiscum*, shall re-  
 ‘ main heritable, and not fall under the single  
 ‘ escheat ; nor shall any part thereof pertain to  
 ‘ the relict, *jure relictæ*, where the bonds are  
 ‘ made payable to the husband ; nor to the  
 ‘ husband, *jure mariti*, where the bonds are  
 ‘ made payable to the wife, unless the relict, or  
 ‘ husband, have otherways right and interest  
 ‘ thereto. ’

By this act, the nature of the bond is regulated ; and in every question, but those in which the rights of husband and wife, and of the fisc, are concerned, the bond is declared to be moveable, unless it contain a warrant for fine, or be rendered heritable by destination.

The modern moveable bond, properly speaking, consists of two parts ; the acknowledgement of the receipt of the money ; and the obligation to repay. In so simple a deed, it answers no good purpose to break these down into lesser parts.

1. *Movable Bond.*

I A, GRANT me instantly to have BORROWED from B the sum of 500l. Sterling, whereof I hereby acknowledge the receipt, renouncing all exceptions to the contrary; WHICH SUM OF FIVE HUNDRED POUNDS STERLING I BIND and OBLIGE myself, my heirs, executors and successors, TO RE-PAY to the said B, or to his heirs, executors or assigns, at the TERM of MARTINMAS NEXT, with the sum of 100l. Sterling of liquidated penalty, in case of failure; AND the legal interest \* of the said principal sum from the date hereof to the said term of payment, and thereafter as long as the said principal sum shall remain unpaid: AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of HORNING ON SIX DAYS.

CHARGE,

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\* Sometimes, in place of the legal interest, a lesser interest is stipulated in this form. 'And interest of the said principal sum at the rate of 4 per cent. per annum, from the date hereof to the said term of payment, and thereafter as long as the said principal sum shall remain unpaid. But in case the said interest is not paid within twenty days after the term of Martinmas yearly, then, and as often as I shall fail to pay the sum at the rate above mentioned, and within the said space of twenty days after the said term, the legal interest of the said principal sum shall be payable by, and be exigible from, me and my foresaids.'

CHARGE, and all other execution necessary, may pass on a decree to be interponed hereto, in form as effects ; and, for that purpose, I CONSTITUTE

MY PROCURATORS,

&c. IN WITNESS WHEREOF, these presents, written on stamped paper, by C, clerk to D, writer in \_\_\_\_\_, are subscribed by me at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, before these witnesses, the said C, writer hereof, and E, my servant.

A.

C, witness.

E, witness.

In this, you have the common form of the moveable bond ; and I shall now endeavour to give examples of the changes which take place on this deed, arranging them under the following heads : 1. Changes arising from the state of the debtor. 2. From the state of the creditor. 3. From the causes of granting. And, lastly, those changes in the moveable bond arising from other causes.

I. OF CHANGES ARISING FROM THE STATE OF  
THE DEBTOR, &c.

The changes falling under this head I shall endeavour to give examples of, by different forms of the bond.

*Bond where several Debtors are bound jointly.*

WE, A, B and C, GRANT us instantly to have borrowed and received from D the sum of five hundred pounds Sterling, whereof we acknowledge the receipt, and renounce all exceptions in the contrary ; WHICH sum of five hundred pounds Sterling we BIND and OBLIGE us, our heirs, executors and successors respectively, to repay to the said D, or to his heirs, executors or assignees ;—(or it may be expressed in this manner : WHICH sum of 500l. Sterling we bind and oblige ourselves jointly, and our heirs, executors and successors respectively, to repay to the said D, or to his heirs, executors or assignees), and that at the term of next, with the sum of 100l. Sterling of liquidated penalty, \* in case of failure ;  
and

---

\* The penalty is invariably made one fifth part of the principal sum.

and the legal interest of the said principal sum from the date hereof to the said term of payment, and thereafter as long as the said principal sum shall remain unpaid: AND we, CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on six days charge, and all other execution necessary, may pass on a decree to be interponed hereto, in form as effects; and, for that purpose, we CONSTITUTE

our procurators, &c.

In witness whereof, these presents, written on stamped paper by E, clerk (*or apprentice*) to F, writer in \_\_\_\_\_, ARE SUBSCRIBED by us as follows, viz. by us the said A and B at the \_\_\_\_\_ day of \_\_\_\_\_ 1810, before these witnesses, the said E and F; and by me the said C at \_\_\_\_\_, the \_\_\_\_\_ day of the said month and year foresaid, before these witnesses, G and H, both my servants.

E, witness.

A.

F, witness.

B.

G, witness.

C.

H, witness.

*Bond by several Debtors bound jointly and severally.*

WE, A, B and C, GRANT us instantly to have borrowed and received from D the sum of five  
 3 hundred

hundred pounds Sterling, whereof we grant the receipt, and renounce all exceptions in the contrary; WHICH sum of five hundred pounds Sterling we BIND and OBLIGE us, jointly and severally, our heirs, executors and successors whomsoever, to repay to the said D, or to his heirs, executors or assignees, and that at the term of next, with the sum of 100l. Sterling of liquidated penalty, in case of failure, and the legal interest of the said principal sum from the date hereof to the said term of payment, and thereafter as long as the said principal sum shall remain unpaid: AND we CONSENT to the REGISTRATION hereof, &c. *as in the preceding example.*

*Bond where the Debtors bind their Heirs, and renounce the Right of Discussion.*

WE, A and B, GRANT us instantly to have borrowed and received from C the sum of one thousand pounds Sterling, of which sum we acknowledge the receipt, and renounce all exceptions in the contrary; WHICH sum of one thousand pounds Sterling we BIND and OBLIGE ourselves, jointly and severally, and our heirs and successors, as well male and of tailzie, conquest and provision, as our respective heirs-general and of line, and executors and successors whomsoever, (renouncing the benefit of discussing our said respective

spective heirs, of whatever kind or description they may be), to repay [*or this part of the bond may be more shortly expressed ; as, for example : We BIND and OBLIGE ourselves, jointly and severally, and our heirs, executors and successors respectively, (renouncing the benefit of discussion), to repay]* to the said C, or to his heirs, executors or assignees, at the term of                      next, with the sum of two hundred pounds Sterling of liquidated penalty, in case of failure, and the legal interest of the said principal sum from the date hereof to the said term of payment, and thereafter as long as the said principal sum shall remain unpaid : AND we CONSENT to the REGISTRATION, &c. *in common form.*

*Where Tutors are bound.*

The bond by a tutor is certainly not a common deed. Spottiswood says, ‘ Bonds granted for another, and which oblige, not the figner, but a third party, to whose behoof the money is borrowed, are rare, and very unsure, and almost never occur ; yet, for institution’s sake, take the following examples.’ Mr Spottiswood then proceeds to give forms of bonds by tutors, and by minors, with the con-



sent of their curators ; and, perhaps, it would have been as well, had these forms been always given with equal caution, since they are of a nature very likely to occasion disputes.

Where a loan of this kind is negotiated, it will commonly be on the credit of the tutor, and he will be taken bound personally. But, as the law gives a claim against the minor, where the money that has been borrowed has truly been applied to his use, it may be for the interest both of the lender and of the tutor, to preserve evidence of the application of the money ; and, therefore, this ought not only to be specified in the bond, but separate evidence of the application should be preserved by the creditor. In this view, the bond may be expressed in this manner.

*Bond by Tutors.*

WE, A and B, tutors nominated to C by C his father, conformably to a deed of nomination in our favours, of date , and recorded ; WHEREAS it appeared to us to be for the interest of our pupil to purchase from E the lands of , and we having made that purchase for him, have borrowed from F the sum of

of five hundred pounds Sterling, to enable us to pay part of the price of the said lands ; and which sum of five hundred pounds Sterling has been this day, at our desire, paid over by the said F to the said E, as expressed in the narrative of his disposition of the lands to our said pupil : THEREFORE, WE the said A and B, as tutors foresaid, BIND and OBLIGE the said C our pupil, and ourselves, jointly and severally, and our heirs, executors and successors, TO REPAY and again DELIVER to the said F, his heirs, executors or assignees, the said PRINCIPAL SUM of five hundred pounds Sterling, and that at the term of Martinmas next, with one hundred pounds of liquidate expenses, in case of failure ; TOGETHER ALSO with the INTEREST of the said principal sum from the date hereof to the said term of payment, and thereafter during the not payment of the said principal sum : AND we CONSENT to the REGISTRATION hereof, &c.

*Bond by a Minor with consent of his Curators.*

The same difficulties occur here, as where the bond is granted by a tutor in name of his pupil ; and the same precautions are necessary for the safety of the creditor and of the curator.

*Bond by a Minor and his Curators.*

I A, with the advice and consent of B and C, curators nominated to me by D my father, by deed of nomination, dated , and registered , having purchased from E the lands of , at the price of one thousand pounds Sterling; and, having borrowed from F the sum of five hundred pounds Sterling, to enable me to pay the said price, which sum of five hundred pounds Sterling the said F has this day paid into the hands of the said E, as acknowledged in the narrative of his disposition to me the said A: THEREFORE, I the said A, with the advice and consent of the said B and C my curators, and we the said B and C for ourselves, BIND and OBLIGE ourselves, jointly and severally, our heirs, executors and successors, to REPAY and DELIVER to the said F, his heirs, executors or assignees, the said PRINCIPAL SUM of five hundred pounds Sterling, and that at the term of Martinmas next, with one hundred pounds Sterling of liquidate penalty, in case of failure; TOGETHER. ALSO with the INTEREST of the said principal sum from the date hereof to the said term of payment, and thereafter during the not payment of the said principal sum: AND we CONSENT to the REGISTRATION hereof, &c.

*Bond*

### *Bond by a Factor.*

I A, FACTOR for B, by a factory of date  
, and registered in the books of  
the day of , CONSIDERING that  
I am thereby empowered to borrow money for the  
use of my constituent, and to bind him in com-  
mon form for the repayment thereof; AND hav-  
ing, in virtue of the power thereby committed to  
me, BORROWED from C, for behoof of the said  
B, the sum of five hundred pounds Sterling, which  
sum I acknowledge to have this day received:  
THEREFORE, I A, as factor foresaid, and in ex-  
ecution of the power given me by the said factory,  
do hereby BIND and OBLIGE the said B, my con-  
stituent, and his heirs, executors and successors,  
to REPAY to the said C, his heirs, executors or  
assignees, the said PRINCIPAL SUM of five hundred  
pounds Sterling, and that at the term of Martin-  
mas next, with one hundred pounds Sterling of  
liquidate penalty, in case of failure; TOGETHER  
ALSO with the legal INTEREST of the said principal  
sum from this date to the said term of payment,  
and thereafter during the not payment thereof:  
AND I CONSENT to the REGISTRATION hereof in  
the books of Council and Session, or other Judges'  
books competent, therein to remain for preserva-  
tion, and that all execution necessary may follow  
hereon in form as effects; and, for that purpose,

I CONSTITUTE

my procurator, &c. In witness whereof,  
&c.

---

I should apprehend that, in a case of this kind, the safest way of recovering the money would be, by an action against the constituent. But Mr Ruffel, in his Theory of Conveyancing, (p. 122), from the analogy of the registration of decrees-arbitral, proceeding on the clause of registration in the submission, thinks that diligence may go out against the constituent, where the clause of registration in the factory is so expressed as to authorise this diligence to proceed on the obligations come under by the factor.

Perhaps, in this way, personal diligence against the constituent might safely enough pass, as he would be withheld, by a personal objection, from challenging the proceedings. But it might still be questioned, whether the warrant was perfectly correct in poindings or arrestments, where the diligence comes in competition with that of other creditors.

With

With these observations, I shall subjoin the manner in which I think the warrant for this diligence might be procured, where it shall be thought expedient to have recourse to this method of recovering payment, rather than to an action against the constituent.

1. The factory ought to empower the factor, not only to bind his constituent, but also to appoint procurators for the constituent, who may consent to a decree of registration going out against the constituent, as the warrant of letters of horning, on six days charge, and all other necessary execution. 2. The clause of registration in the factory may be expressed in this manner: 'AND I CONSENT to the REGISTRATION hereof, and of the bond or bonds of borrowed money, to be granted by my said factor, in virtue of the powers hereby committed to him, in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days charge, and all other execution necessary, may follow against me, on a decree of the Judges thereof to be interponed thereto, in form as effects; and, for that purpose, I constitute,' &c. 3. In framing the bond, the powers vested in the factor ought to be fully narrated. 4. The

clause of registration in the bond to be granted by the factor may be thus expressed: ‘ And I, as factor foresaid, and in virtue of the powers thereby specially committed to me, do hereby, for and in name of my constituent, CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges’ books competent, that letters of horning, on six days charge, and all other execution, may follow against him, on a decree to be interponed hereto; and, for that purpose, I, as empowered in manner foresaid, CONSTITUTE  
procu-  
rators for, and in name of, my said constituent, &c. In witness, &c.’ 5. I would present a bill to the Lords, on the extracts of the factory and of the bond, as the warrant of the diligence.

*Bond by a Company.*

WE, A and B, merchants in ,  
and copartners under the firm of A B & Co.,  
GRANT us to have instantly BORROWED and RECEIVED from C, for the use of the said company, the sum of five hundred pounds Sterling, whereof we hereby acknowledge the receipt; WHICH SUM of five hundred pounds Sterling we BIND and OB-  
LIGE

**LIG** ourselves, jointly and severally as individuals, and our heirs, executors and successors whomsoever, as well as the said copartnery of A B & Co., to **REPAY** and **DELIVER** to the said C, his heirs, executors or assignees, at the term of Martinmas next, with the sum of one hundred pounds Sterling of liquidated penalty, in case of failure, **AND** the legal **INTEREST** of the said principal sum from this date to the said term of payment, and thereafter during the not payment thereof: **AND** we **CONSENT** to the **REGISTRATION** hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days charge, and all other legal execution, may pass against us, or against our estates and effects, or against the estate and effects of the said company, and that upon a decree to be interponed hereto, in form as effects; and, for that purpose, we **CONSTITUTE**

our procurators, &c. In witness whereof, &c.

*Bond by a Corporation:*

In bonds by a corporation, the creditor may trust either to the corporation solely, and then the office-bearers will bind themselves and their successors in office; or he may require the office-



fice-bearers to interpose their own obligation ; to which, if they agree, they must be bound individually, as well as in their public capacity.

The act or charter by which the corporation is constituted, will point out in what manner obligations are to be effectually come under by the corporation ; and, in regard to Royal Burghs, the act 1693, c. 28, requires a previous act of Council, stating the reasons for making the loan, and authorising it ; and, although this be not necessary for the safety of the creditor, it is absolutely so for the security of the magistrates themselves.

*Bond by a Royal Borough.*

WE A, provost of the burgh of ,  
and B, C, D and E, present baillies thereof, F  
dean of guild, and G treasurer thereof ; CONSIDERING that, by act of council of the said burgh,  
of date , we are authorized to borrow,  
for the use of the community, the sum of five  
hundred pounds Sterling, as therein particularly  
expressed ; AND we having BORROWED and instantly RECEIVED from K the sum of five hundred  
pounds Sterling, whereof we hereby acknowledge  
the

the receipt: THEREFORE, we the said provost, baillies, dean of guild and treasurer, under authority of the said act of council, and for ourselves and the remanent members of the council of the said burgh, as representing the community thereof, DO hereby BIND and OBLIGE OURSELVES, and OUR SUCCESSORS in OFFICE, in name and behalf foresaid, to REPAY and DELIVER, against the term of Martinmas next, to the said K, his heirs, executors or assignees, the said PRINCIPAL SUM of five hundred pounds Sterling, with interest thereof from this date to the said term of payment, and thereafter during the not payment thereof, WITH the SUM of one hundred pounds Sterling of LIQUIDATED PENALTY, in case of failure; AND WE, for OURSELVES and for OUR SUCCESSORS in OFFICE, CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days charge, and all other execution necessary, may follow on a decree to be interponed hereto in common form; and, for that purpose, we CONSTITUTE

OUR and THEIR PROCURATORS, &c. In witness whereof, &c.

*Bond where the Magistrates are bound individually.*

WE A, &c. (as in the preceding style, till you come to the words of obligation, which will be expressed

*pressed in this form*) DO hereby BIND and OBLIGE ourselves, and our successors in office, in name and behalf foresaid : AND FURTHER, we the said A; B, C, D, E, F and G, DO hereby BIND and OBLIGE ourselves as individuals, in our private capacities, conjunctly and severally, and our respective heirs, executors and successors, to REPAY and DELIVER, against the term of Martinmas next, to the said K, his heirs, executors or assignees, the said PRINCIPAL SUM of five hundred pounds Sterling, &c. (*as in the preceding style.*)

*Bond by an Incorporation.*

WE A, deacon, and B treasurer, of the incorporation of \_\_\_\_\_, of the burgh of \_\_\_\_\_, and C, D, E and F, members of the said incorporation, GRANT us to have borrowed and instantly received from G, for the use and behoof of the said incorporation, the sum of one hundred pounds Sterling; WHICH SUM of one hundred pounds STERLING, WE, for OURSELVES, AND as taking burden on us for the remanent MEMBERS of the said INCORPORATION, BIND and OBLIGE US and THEM, and OUR and THEIR SUCCESSORS in place and office, to REPAY to the said G, or to his heirs, executors or assignees, at the term of Martinmas next, WITH the sum of twenty pounds Sterling of liquidate penalty in case of failure; AND the legal interest

interest of the said principal sum, from the date hereof, to the said term of payment, and thereafter, as long as the said principal sum shall remain unpaid; AND we CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days charge, and all other execution necessary, may pass against the office-bearers of the said incorporation for the time, on a decree to be interponed hereto in common form; and for that purpose we CONSTITUTE

OUR PROCURATORS, &c.

In witness whereof, &c.

*Bond by a Principal and Cautioners.*

I A, grant me to have instantly borrowed from M, the sum of 500l., whereof I hereby acknowledge the receipt; WHICH SUM of 500l. STERLING, I A, as PRINCIPAL, and B, C and D, as CAUTIONERS with and for me, BIND and OBLIGE ourselves, our heirs, executors and successors, to REPAY to the said M, his heirs, executors or assigns, AND that against the term of Martinmas next, WITH the sum of 100l. Sterling of liquidate penalty in case of failure, AND the legal interest of the said principal sum, from the date hereof to the said term of payment, and thereafter, as long as the said principal sum shall remain unpaid; AND

I

I the said A BIND and OBLIGE myself, my heirs, executors and successors, to free and relieve the said B, C and D, their heirs, executors and successors, from payment of the sums of money, principal, interest, and penalty above specified, or any part thereof, and of all damage, interest and expenses they, or either of them, may incur, through their becoming cautioners for me in manner above written. AND we CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days charge, and all other execution necessary, may follow, on a decree to be interponed hereto in common form; and for that purpose we CONSTITUTE

OUR PROCURATORS,

&c. In witness whereof, &c.

*Bond by a Principal and Cautioners, where they are all bound Jointly and Severally.*

I A, grant me to have borrowed and instantly received from M, the sum of 500l. Sterling, whereof I hereby acknowledge the receipt; WHICH SUM of 500l. STERLING, I the said A, as PRINCIPAL, and B, C, and D, as CAUTIONERS and FULL DEBTORS for and with me, BIND and OBLIGE ourselves, our heirs, executors and successors, to REPAY, &c. (or it may be expressed in this manner): I the said A,

as PRINCIPAL, and B, C, and D, as CAUTIONERS for and with me, BIND and OBLIGE ourselves, JOINTLY and SEVERALLY, our heirs, executors and successors, to REPAY, &c.—(*the rest of the bond will be in the form of the preceding example.*)

*Bond by a new Cautioner, entered into for the Relief of the Principal Debtor, and giving the new Cautioner a Claim of Relief against the former Cautioners pro rata only.*

WE A and E, CONSIDERING that I the said A, as principal, and with me B, C, and D, as cautioners, by our bond, of date , bound and obliged us, our heirs, executors and successors, to repay to M, his heirs, executors, or assignees, at the term of Martinmas then next, the sum of 500l. Sterling, with interest thereof from the date of the said bond to the said term of payment, and thereafter during the not payment thereof, with 100l. Sterling of liquidate penalty in case of failure, as the said bond, of date foresaid, in itself more fully bears : THAT B, one of the said cautioners, having died, the said M has required, that I, the said A, should either pay up the said debt, or find another cautioner willing to become bound for the debt ; AND I the said E, having agreed to become bound for A, alongst with the other cautioners ; THEREFORE I the said A, as .

PRINCIPAL, and I the said E as CAUTIONER, for and with the said A, alongst with the said C and D, as cautioners under the foresaid bond, BIND and OBLIGE ourselves, our heirs, executors and successors, to REPAY, against the term of Whitsunday next, to the said M, his heirs, executors or assignees, the said PRINCIPAL SUM of 500l. STERLING, with interest thereof from the term of Martinmas last, (all former interest being paid up), to the said term of payment, and thereafter during the not payment of the said principal sum; TOGETHER ALSO with the sum of 100l. Sterling of liquidate penalty in case of failure: AND it is hereby expressly PROVIDED and DECLARED, that as the said E has become bound for the said debt, at the desire of the said A, and for his accommodation, he shall be entitled to relief against the cautioners in the said original bond, and their heirs, to the same extent as if he had become bound alongst with them in that original bond, and no further; AND the said parties CONSENT to the REGISTRATION hereof in the books of Council and Session, or others competent, that letters of horning, on six days charge, and all other execution necessary, may follow, on a decree to be interponed hereto, in common form; and for that purpose, we CONSTITUTE

OUR PROCURATORS,

&c. In witness whereof, &c.

I

*Bond.*

*Bond of Corroboration by a new Cautioner, entered into for the Relief both of Principal and Cautioners, and entitling the new Cautioner to a total Relief against the former Cautioners.*

WE A, B, C, D and E, CONSIDERING that the said A, as principal, and we B, C and D, as cautioners, by our bond, of date                      bound and obliged us, our heirs, executors and successors, to repay to M, his heirs, executors or assignees, at the term of Martinmas                      , the sum of 500l. Sterling, with interest thereof from the date of the said bond to the said term of payment, and thereafter during the not-payment thereof, with 100l. Sterling of liquidate penalty in case of failure; as the said bond, of date foresaid, registered in the books of Council and Session (office                      ), of date the                      , more fully bears: THAT the said M, having raised letters of horning on the said bond, which letters are dated and signeted the                      , the same were duly executed against us, and we were thereupon denounced rebels, and put to the horn; and letters of caption were thereafter raised thereon, dated and signeted                      : THAT, on our application to the said M, he has agreed not to enforce the said diligence till the term of Whitsunday next, on our procuring E to become bound to him for the said debt, in manner herein after expressed; AND I the said A, having



ing paid up the interest on the said debt prior to the date hereof, with the expense which has been incurred in raising the said diligence: THEREFORE I the said A, as PRINCIPAL, and we the said B, C, D and E, as CAUTIONERS for and with the said A, IN CORROBORATION of the original bond above narrated, and without prejudice thereto, or to any diligence that has followed thereon, *sed accumulando jura juribus* (providing always that the said diligence shall not be further carried into effect till after the term of payment herein after expressed), BIND and OBLIGE us, jointly and severally, our heirs, executors and successors, to make payment to the said M, his heirs, executors or assignees, of the foresaid PRINCIPAL SUM of 500l. STERLING, and that at the term of Whitsunday next, WITH 100l. STERLING of liquidate penalty in case of failure, and the due and legal interest of the said principal sum, from the date hereof to the said term of payment, and thereafter during the not-payment of the said principal sum: AND for the relief of the said E, WE, the said A, B, C and D, BIND and OBLIGE ourselves, *jointly* and *severally*, our heirs, executors and successors, to FREE and RELIEVE him, his heirs, executors and successors, of the sums of money, principal, interest, and penalty above specified, or of any part thereof, and of all damage, interest and expenses, he may incur through his interposing his credit for us in manner foresaid. AND WE CONSENT to the  
REGISTRATION

REGISTRATION hereof, &c. (*as in the preceding example.*)

*Bond of Relief.*

I A, CONSIDERING that B, C, D, and I, by our bond, of the date hereof, granted us to have borrowed and received from E, treasurer to the governor and company of the bank of \_\_\_\_\_, in name and behalf of the said company, the sum of one thousand pounds Sterling; which sum, with the interest thereof from the date of the said bond to the term of payment therein expressed, we bound and obliged us, conjunctly and severally, our heirs, executors, and successors whatsoever, thankfully to content and repay at the bank-office, and in bank money, to the governor and company of the said bank, and their assignees, or to the said E, their treasurer, or his successor in office, in their name, and for their behoof, and that against the term of \_\_\_\_\_, with two hundred pounds, money foresaid, of liquidate expenses, in case of failure, together also with the due and ordinary annualrent of the said principal sum, as long as the same should happen to remain unpaid: AND FURTHER CONSIDERING, that the said B, C, and D, became bound in the foresaid bond, at my desire, and to assist me with their credit, the whole of the money being applied for my own proper

use and behoof, and that it was expressly stipulated, that I should grant them the security underwritten: THEREFORE I, the said A, do hereby BIND and OBLIGE me, my heirs, executors, and successors whomsoever, to FREE and RELIEVE the said B, C, and D, and their heirs, executors, and successors, FROM all payment of the foresaid sum of one thousand pounds Sterling of principal, two hundred pounds Sterling of liquidate expenses, in case of failure, and interest of the said principal sum, from the date of the said bond, and thereafter during the not-payment thereof; AND FROM the said bond, and whole effects thereof; AND FROM all damage and expense which the said B, C, D, or either of them, or their foresaids, may happen to sustain in any manner of way, by becoming bound with me in manner foresaid: AND for that purpose, I BIND and OBLIGE me and my foresaids, at the said term of , EITHER to make payment to the said E, for behoof of the said bank, of the foresaid principal sum of one thousand pounds Sterling, and interest then due thereupon; and to retire the said bond, and cancel the same, at the sight of the said B, C, and D, unregistered, or, in case of registration, to obtain a proper discharge thereof; OR, in case I shall fail so to do, then I BIND and OBLIGE me and my foresaids, to make payment to the said B, C and D, or to one or other of them, or to their heirs or executors, of the foresaid principal sum and annualrents,

nualrents, from this date, during the not-payment thereof; to the end that they may apply the same for retiring the bond above narrated, and thereby operate their own relief; and this I BIND me and my foresaids to perform, under the penalty of two hundred pounds Sterling, to be paid by me to the said B, C and D, or their foresaids, in case of failure; and that over and above performance: AND I hereby DECLARE, that all manner of diligence shall be competent to follow hereon, in virtue of the clause of registration herein contained, at the instance of the said co-obligants, jointly, or of any one of them separately, and their heirs respectively, for obliging me and my foresaids to implement this bond of relief. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days' charge, and all other execution necessary, may pass, on a decree to be interponed hereto in common form; and, for that purpose, I constitute

my procurators, &c.

In witness whereof, &c.

*Intimation of the Bond of Relief, in terms of the  
Act 1695, cap. 5.*

At Edinburgh, and within John's Coffeehouse  
there, the day of , com-  
C 3 peared

peared M, as procurator for B, C and D ; and there, in the personal presence of E, at the time of executing the principal bond after mentioned, HOLDING in his hands a bond of relief, of date , granted by A to the said B, C and D ; whereby the said A bound and obliged himself, his heirs and successors, to free and relieve them, their heirs, executors, and successors, from all payment of the sum of one thousand pounds Sterling of principal, two hundred pounds Sterling of liquidate penalty, and the interest of the said principal sum from , during the not-payment thereof ; all contained in a bond, granted by them and the said A, to the said E, of date ; and from the said bond, and whole effects thereof, in manner more fully mentioned in the said bond of relief, of date foresaid ; WHICH BOND of RELIEF the said M delivered to me, notary public, to be publicly read over, and intimated to the said E, in terms of law ; and which being done, the said M PROTESTED that the said bond of relief was duly and legally INTIMATED to the said E, in terms of the act of Parliament in that behalf made ; and that the said B, C and D, and each of them, and their heirs and successors, should be entitled to relief from the cautionary engagement come under by them to the said E, after the expiry of the seven years from the date of the said bond, as provided for by the said act ; AND THEREFORE, and upon ALL and SUNDRY the premises, the said M asked

asked and took instruments in the hands of me, notary public, subscribing. THESE THINGS were so done within the said coffeehouse, at the time of executing the said principal bond, by the said A, B, C and D, to E, betwixt the hours of one and two afternoon, place, day, month and year of God, first above written, before and in presence of R and S, witnesses to the premises, specially called and required.

*Quæ attestor,*

R, witness.

G. N. P.

S, witness.

Or the creditor may give the following attestation on the back of the bond of relief.  
 ‘ I acknowledge that this bond of relief has  
 ‘ been duly intimated to me, at the time of receiving the principal bond, within narrated ;  
 ‘ and I declare the cautioners, B, C and D, to  
 ‘ be entitled to the relief provided for them by  
 ‘ law, after the expiry of seven years from this  
 ‘ date. In witness whereof, I have written  
 ‘ and subscribed these presents at Edinburgh,  
 ‘ the            day of            E. ’ But the fact is, that neither of these forms are likely to be required, as the insertion of a clause of relief in the bond will produce the same effect much more easily.

2. OF CHANGES ARISING FROM THE STATE OF  
THE CREDITOR, &c.

*Bond to two Creditors jointly.*

I A, grant me to have borrowed and received from B, the sum of five hundred pounds Sterling, whereof I hereby acknowledge the receipt; WHICH SUM of five hundred pounds Sterling, I BIND and OBLIGE me, my heirs, executors and successors, to repay to the said B, and to C, jointly, and to their heirs, executors or assignees, respectively, AT the TERM of MARTINMAS next, &c. (*in common form.*)

*Bond to a husband and wife, in conjunct fee and  
liferent, and to the heirs-male of the marriage,  
in fee, &c.*

I A, GRANT me to have borrowed and received from B the sum of five hundred pounds Sterling, whereof I hereby acknowledge the receipt; WHICH SUM of five hundred pounds Sterling, I hereby BIND and OBLIGE me, my heirs, executors and successors whatsoever, to content and pay to the said B, and C his spouse, and the longest liver of them two, in conjunct fee and liferent, for the said C, her liferent use of the interest thereof only, in the event that she shall survive her said husband, and to the heirs-male to be procreated betwixt them in fee; WHOM FAILING, to the said  
B,

B, his other heirs-male or assignees whomsoever ;  
 AND THAT at the term of Martinmas next ; WITH  
 the sum of one hundred pounds Sterling of liqui-  
 date expenses, in case of failure ; together also  
 with the due and legal interest of the said princi-  
 pal sum, from the date hereof to the said term of  
 payment ; and thereafter during the not-payment  
 of the said principal sum ; and that at two terms  
 in the year, Martinmas and Whitsunday, in equal  
 portions, beginning the first term's payment of  
 the interest of the said principal sum, at the term  
 of Martinmas next, for the half-year preceding,  
 and so forth termly thereafter ; WITH this PROVI-  
 sION, that it shall be lawful to, and in the power  
 of, the said B, by himself alone, and without the  
 consent of the said C his spouse, to uplift the said  
 principal sum, as well as the interest thereof, and  
 penalty, if incurred ; to discharge the same ; and  
 to do all diligence for recovering thereof, in the  
 same manner as if this bond had been conceived  
 simply to him, his heirs and executors : BUT  
 DECLARING, that, in that case, he shall be HOLD-  
 EN and OBLIGED to reemploy the same on other  
 sufficient security, at his discretion ; and shall  
 take the rights and securities thereof conceived  
 to himself and his said spouse, and the heirs-male  
 to be procreated betwixt them, in the terms be-  
 fore expressed : AND DECLARING ALSO, that, if  
 the said B shall happen to die while this present  
 security is outstanding, the liferent hereby pro-  
 vided



vided to the said C, and the fee taken to the heirs-male of their marriage, shall be understood to be in implement, *pro tanto*, of the obligations incumbent on the said B, by his marriage contract with the said C, of date : AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days' charge, and all other execution, may pass, upon a decree to be interponed hereto in common form; and, for that purpose, I constitute my procurators, &c. In witness whereof, &c.

*Bond to one in Liferent, and to another in Fee.*

WE, A and B, grant us to have instantly borrowed and received from C the sum of one thousand pounds Sterling, being the sum which D advanced with his daughter to the said C, on his entering into the marriage-contract with her, of date ; WHICH SUM of one thousand pounds Sterling, we, the said A and B, BIND and OBLIGE us, conjunctly and severally, and our heirs, executors and successors whomsoever (renouncing the benefit of discussing our said heirs, of whatever kinds, in order or priority), to content and pay to the said C, in liferent, and to E, the only child procreated of the marriage betwixt the

the said C, and the daughter of the said D, in fee ; WHOM FAILING, to the said C, his heirs and assignees whomsoever, at the term of Martinmas next ; with a fifth part more of the said principal sum of liquidate expenses, in case of failure ; together with the due and legal interest of the said principal sum, from the date hereof to the said term of payment, and termly and proportionally thereafter, during the not-payment of the said principal sum ; and that at two terms in the year, Whitsunday and Martinmas, by equal portions ; WITH this PROVISION, that it shall be in the power of the said C, by himself alone (though he be only liferenter), and without the consent of the said E, to uplift, receive, discharge, and do diligence, for recovering payment of the sums of money hereby due, or to assign and convey the same in the same manner, and as freely as if he had been unlimited fiar thereof ; he being always bound to reemploy the same, in terms of the said contract of marriage ; but with which, or the application of the said sums, when uplifted from us, or our foresaids, we are noways to be concerned, or answerable in any manner of way, nor further than for once and single payment to the said C, or his assignees, in case he shall uplift or assign the said sums hereby due ; AND we CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, to have a decree interponed hereto,

hereto, authorising letters of horning, on six days' charge, and all other execution necessary to follow thereon, in common form; and, for that purpose, we CONSTITUTE

OUR PROCURATORS, &c.

In witness whereof, &c.

*Bond excluding Executors; 1. from the principal sum only; 2. from both Principal and Interest.*

I A, grant me to have borrowed from B, the sum of five hundred pounds Sterling, whereof I hereby acknowledge the receipt; WHICH SUM of five hundred pounds Sterling, I BIND and OBLIGE me, my heirs, executors and successors whomsoever, renouncing the benefit of discussion, to content and repay to the said B, his heirs and assignees (excluding his executors). [*This is the form when the executors are to be excluded from the principal sum only; but sometimes the creditor carries the exclusion further, and cuts off the executor from the interest as well as the principal sum; and where this is intended, the clause will be thus expressed:*] ('Seccluding his executors not only from the said principal sum, but also from any interest or expenses that may fall due, or be incurred in virtue hereof.') AND THAT against the term of Martinmas next, WITH the sum of one hundred pounds Sterling of liquidate expenses in case of failure;

failure; together also with the due and legal interest of the said principal sum, from the date hereof to the foresaid term of payment, and yearly, termly, and continually thereafter, during the not payment thereof: AND I CONSENT to the REGISTRATION, &c. (*in common form.*)

*Bond to a Tutor.*

I A, grant me to have borrowed, and instantly received from B, as tutor for C, and on his account, the sum of five hundred pounds Sterling, whereof I hereby acknowledge the receipt; WHICH sum of five hundred pounds Sterling, with interest thereof, from this date to the term of payment underwritten, I BIND and OBLIGE me, my heirs, executors and successors, to repay to the said C, his heirs, executors or assignees, or to the said B, his tutor, for his behoof, at the term of Martinmas next, with the sum of one hundred pounds Sterling of liquidate expenses in case of failure, &c. (*in common form.*)

*Bond to a Curator.*

THE style of the bond to a curator, in the same way with the bond to a tutor, acknowledges the receipt of the money from the curator; and, in  
the

the obligatory part, takes the debtor bound to pay to the minor, his heirs, executors or assignees, or to the curator, as in the preceding example.

*Bond to Trustees.*

I A, grant me to have borrowed, and instantly received, the sum of five hundred pounds Sterling from B, factor for C and D, a quorum of the trustees appointed by E, for managing his personal estate, for certain ends and purposes mentioned in a trust-deed executed by him in their favour, and in favour of certain other persons, whereof the major part of the accepters are declared to be a quorum, dated                   : WHICH SUM of five hundred pounds Sterling, I, by these presents, BIND and OBLIGE me, my heirs, executors and successors whomsoever, to REPAY to the said C and D, and to the other trustees nominated by the said deed of trust, who shall survive and accept thereof; OR to the assignees of the said trustees, or their successors in office; OR to the said B, their factor, in their name; OR to any succeeding factor to be appointed by the said trustees; AND THAT at and against the term of MARTINMAS next; with the SUM of one hundred pounds Sterling of liquidate expenses in case of failure; TOGETHER WITH the due and lawful interest of the said principal sum, from the date hereof to the said term of payment, and yearly, termly, and continually

continually thereafter, during the not payment of the said principal sum; WITH this PROVISION ALWAYS, that upon payment of the said principal sum, interest thereof, and liquidate expenses, if incurred, a discharge by the quorum of the said trustees, or by their factor for the time, shall be a sufficient exoneration to me of this present bond, and of the sums herein contained, without any necessity for me to inquire into the application thereof, or to see the same applied to the ends and purposes of the said trust-right. AND I CONSENT to the REGISTRATION hereof, &c. (*in common form.*)

*Another Example of a Bond to Trustees.*

I A, grant me to have borrowed and received from B and C, the sum of one thousand pounds Sterling, of which I hereby acknowledge the receipt; WHICH SUM of one thousand pounds Sterling was formerly vested in government funds, in the name of the said B and C, as trustees, for paying the interest of the said sum to D and his assigns, for and during the term of his natural life; and from and after his decease, then to pay the same to E, his wife, and her assigns, for and during the term of her natural life; and from and after the decease of the said D, and E his wife, in trust, to pay the said sum of one thousand pounds Sterling to the child or children of the said D, and

E his wife, as mentioned in a settlement made previous to the marriage of the said D and E; and in default of such issue, to pay the said sum, or transfer the securities on which the sum shall be vested, unto the executors, administrators and assigns of the said D; AND WHICH SUM of one thousand pounds Sterling, now borrowed and received by me, I bind and oblige myself and my heirs, executors and successors whatsoever, (renouncing the benefit of discussing my heirs of, whatsoever kind, in order or priority), to CONTENT and REPAY to the said B and C, as trustees, and in trust to the special uses and purposes before mentioned, as the same are fully expressed in the said settlement, made previous to the marriage of the said D, and E his wife; to which settlement reference is hereby had; and that at the term of Martinmas next; WITH the sum of two hundred pounds Sterling of liquidate expenses, in case of failure; TOGETHER ALSO with the due and legal interest of the said principal sum, from this date to the said term of payment, and yearly, termly, and continually thereafter, during the not payment of the same; BUT in case of the decease of the said E, wife of the said D, without a child or children procreate of the marriage between her and her said husband, and in life at the time of her decease, whereby the purposes of the foresaid trust will be at an end; THEN, and in THAT CASE, I, the said A, BIND and OBLIGE myself and my  
I  
foresaid,

foresaid, to pay the foresaid sum of 1000l. Sterling to the said D himself, his heirs, executors or assignees (the term of payment thereof above stipulated, being first come and bygone), under the penalty, and with interest, in manner above expressed; AND, in which event, it is hereby DECLARED, that the administration of the said B and C, of the foresaid sum, shall thereafter cease and determine, and the sums hereby due become the sole and unlimited property of the said D. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days' charge, and all other execution necessary, may pass on a decree to follow hereon, in common form; and for that purpose, I CONSTITUTE

MY PROCURATORS, &c. In witness whereof, &c.

*Bond to a Factor.*

I A, grant me to have borrowed from B, as factor for C, under a factory of date , recorded , the sum of five hundred pounds Sterling, whereof I acknowledge the receipt; WHICH SUM of five hundred pounds Sterling, I BIND and OBLIGE me, my heirs, executors and successors, to REPAY to the said C, his heirs, executors or assignees, or to the said B, his factor,



for his behoof, AND THAT at the term of Martinmas next, &c. (*in common form.*)

*Another Form.*

I A, grant me to have borrowed and received from B, factor for C, under a factory of date , recorded , the sum of 500l. Sterling, whereof I hereby acknowledge the receipt; WHICH SUM of 500l. STERLING, I BIND and OBLIGE me, my heirs, executors and successors, to REPAY to the said B, for behoof of the said C his constituent, or of the heirs, executors and assignees of the said C, AND THAT against the term of Martinmas next, &c.

*Bond to a Corporation.*

I A, grant me to have borrowed and received from B, box-master of the incorporation of , the sum of 100l. Sterling, being part of the funds of the said incorporation, whereof I hereby acknowledge the receipt; WHICH SUM of 100l. STERLING, I hereby BIND and OBLIGE myself, my heirs, executors, and successors, to REPAY to the said B, present box-master of the said incorporation, or to his successors in office for the use and behoof of the said incorporation,

or

or to his assignees, AND THAT at the term of, &c.  
(in common form.)

*Bond to a Wife, excluding the jus mariti.*

I A, grant me to have borrowed and received from B, wife to C, the sum of 500l. Sterling, of which I hereby acknowledge the receipt; which sum of 500l. Sterling was provided to the said B, by M, her father, exclusive of the *jus mariti* of her present or of any future husband, and declared to be an alimentary fund for her own use and behoof, unaffected by the debts or deeds of her husband, in manner more fully expressed in a bond of provision executed by her said father, of date , recorded ; and which money has been lent out to D, on a bond by him to the said B, excluding the *jus mariti* of her husband, and declaring the same to be an alimentary fund for her in terms of her father's settlement; AND WHICH sum of 500l. Sterling, I bind and oblige me, my heirs, executors and successors, to repay to the said B, her heirs, executors or assignees, (expressly excluding the *jus mariti* and power of administration of the said D, her husband, or of any future husband), AND THAT against the term of Martinmas next, WITH 100l. Sterling of liquidate penalty in case of failure, AND the legal interest of the said principal

D 2

sum

sum from the date hereof, to the said term of payment, and termly and continually thereafter, during the not payment thereof; PROVIDING and DECLARING, (as it is expressly provided and declared in the settlement by her said father above mentioned), that no debt or deed of the said D, Her husband, or of any future husband, shall in any way affect or burden this present bond, or the sums of money hereby due. But the same shall remain to her as an alimentary fund, free of such debts or deeds; AND FURTHER DECLARING, that all discharges or conveyances of the sums of money herein contained, granted by herself alone, and without the consent of her husband, shall be held valid and sufficient for discharging or conveying the principal sum, interest arising thereon from time to time, and penalty above specified. AND I CONSENT to the REGISTRATION hereof, &c. (*in common form.*)

*Bond where the Debt arises from a Settlement of Accounts.*

I A, considering that from an account of debit and credit, betwixt B and me, fitted and docketed by us of date , it appears that I stood indebted to him, as at the term of Whitsunday last, in the sum of 500l. Sterling; THEREFORE, I hereby BIND and OBLIGE me, my heirs, executors and successors, to repay to the said B,  
his

his heirs, executors or assignees, the said balance of 500l. Sterling, AND that against the term of Martinmas next, WITH the sum of ONE HUNDRED POUNDS STERLING of liquidate penalty in case of failure, AND the lawful interest of the said principal sum, from the said term of Whitsunday, to the said term of payment, and yearly and continually thereafter, during the not payment of the said principal sum. AND I CONSENT, &c. (*in common form.*)

*Or in this Form.*

I A, acknowledge that I am justly indebted to B, in the sum of 100l. Sterling, as contained in an account of furnishings, commencing the , and ending ; WHICH SUM OF 100l. STERLING, &c. (*in common form.*)

3. OF CHANGES ARISING FROM THE CAUSE OF GRANTING, &c.

*Bond where the Debtor owes other Sums to the Creditor.*

In this case, the following clause will be introduced immediately before the clause of registration, ‘ And it is hereby declared, that the  
‘ sums contained in this bond, are over and  
‘ above the sums contained in a bond of  
D 3 ‘ date,’



advanced and paid, as at the term of Whitsunday last, to the said B, the sum of 2000l. Sterling, being the stipulated price of the said lands; yet, in fact, I have hitherto paid no part of the said price, the same, with interest thereof from Whitsunday last, being still due by me; THEREFORE I hereby BIND and OBLIGE me, my heirs, executors and successors whomsoever, to CONTENT and PAY to the said B, his heirs, executors or assignees, the foresaid price of 2000l. Sterling, at the terms, and by the proportions following, viz. 500l. Sterling thereof at the term of Martinmas next; the like sum of 500l. Sterling at the term of Whitsunday 1801; and the sum of 1000l. Sterling, in full and complete payment of the said sum of 2000l. Sterling, at the term of Martinmas 1801; WITH a fifth part more of each of the said several sums, of liquidate expense, in case of failure; TOGETHER ALSO with the legal interest of the said three sums, from the said term of Whitsunday last bypast, to the respective terms of payment of the said sums, and yearly, termly, and continually thereafter, during the not payment of the said respective principal sums. AND I CONSENT to the REGISTRATION, &c. (*in common form.*)

*Bond for Part of the Price of Lands retained till Incumbrances are cleared, (with a Power to the Purchaser to apply the retained Price to that Purpose), and till Part of the Progress be recovered.*

I A, do hereby ACKNOWLEDGE and DECLARE, that although the disposition of the lands of , granted by B to me, of this date, bears that I have advanced and paid to him the sum of 7300l. Sterling, as the agreed price of the said lands, with the legal interest thereof from the term of Whitsunday ; yet, I am still indebted to him in a balance of 2020l. Sterling, with interest thereof from Martinmas last ; WHICH SUM is left in my hands, till certain debts and diligences affecting my purchase shall be purged and extinguished, and till certain writs and pieces of the progress are delivered up to me ; AND it being reasonable that he should be secured in the said balance of the price, upon the conditions underwritten ; THEREFORE I, by these presents (but with and under the provisions and conditions underwritten, and no otherwise), BIND and OBLIGE me, my heirs, executors and successors whatsoever, to make payment to the said B, and to his heirs and assignees, (secluding his executors, not only from the said principal sum, but also from any interest or expense which may become due hereon) of the said SUM of 2020l.

STER.

STERLING remaining of the said price, and that at the term of Martinmas next; WITH 404l. Sterling of liquidate expenses in case of failure, TOGETHER with the due and legal interest of the said principal sum from Martinmas last, to the foresaid term of payment, and yearly, termly and proportionally thereafter, during the not payment thereof; BUT, with this PROVISION ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that the said B shall be holden and obliged, at one and the same time, to purge and disburden the said lands, purchased and acquired by me, of all debts, diligences and incumbrances whatever, that do, or may affect the same; and, if he fail therein, it shall be lawful to me to apply as much of the said remaining price as shall be necessary for that purpose, and to take the rights to the said debts in my favour for further security of my purchase; BUT so as the said debts may not, hereafter, affect the said B, his person, or any other separate means and estate belonging to him, except in the case of eviction of the said purchase; AND WITH THIS PROVISION ALSO, that the said B shall be holden and obliged, before I shall be bound to make payment of the said remaining price, either to him, or to the creditors whose debts may affect the said lands, to recover and deliver up to me, the two dispositions of the said lands which are necessary for completing the progress of the writs, and which are particularly conde-

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condescended on in the foresaid disposition, granted by the said B to me, and in the inventory of writs relative thereto, signed by me of this date; OR, if the principals cannot be recovered and delivered up, he shall at least obtain, and deliver to me, proper decrees of proving the tenor of the same, on his own expense; AND DECLARING ALSO, that if he shall neglect to procure the said principal deeds, or provings of the tenors thereof, betwixt and the said term of payment, it shall be lawful to me to insist in a proving of the tenor thereof in my own name, and to deduct, from the sums hereby due, the expense I may be put to in obtaining the same. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on six days charge, and all other execution necessary, may pass on a decree to be interponed hereto, in common form: And for that purpose, I CONSTITUTE  
my procurators,  
&c. In witness whereof, &c.

*Bond for Part of the Price of Lands retained to  
answer an Annuity.*

I A, do hereby ACKNOWLEDGE and DECLARE,  
that notwithstanding the right and disposition,  
dated , of the lands of , grant-  
ed

ed by B to me, bears, that I have made payment to him of 1810l. Sterling, as the price of the said lands, with the interest thereof from Whitsunday last ; yet I have only made payment to him of 10l. Sterling of the said price ; the true state of the case standing as follows ;—C, the former proprietor of the said lands, having exposed the same to sale, in the month of May last, by public roup, they were purchased by the said B, at the price of 1800l. Sterling, conform to articles of roup, and a minute of preference thereon, in favour of the said B, declaring him purchaser, dated ; by which articles of roup, and minute of preference thereon, it is, amongst other things, declared, That the said price of 1800l., there offered and accepted, should bear interest from , during the not payment ; and that the purchaser's entry shall be for that crop, except that the said C shall have the possession of the mansion-house, office-houses and garden till Whitsunday ; and that as E, mother of the said C, stands secured in a life rent annuity of 47l. Sterling, upliftable out of the said lands yearly, during her life, so the purchaser should retain the sum of 940l. Sterling of the price in his hands, for answering the said annuity till her death ; and the residue of the price is declared payable at Whitsunday . In pursuance of which articles of roup, and minute of preference, the said C did, by his disposition, of date , sell and

and dispoſe to the ſaid B, and his heirs and aſſignees, heritably and irredeemably, the foreſaid lands and others; and aſſigned him to the rents for this current crop and year , and granted procuratory of reſignation, and precept of faſine, for infeſting him in ; in virtue of which precept, the ſaid B has been accordingly infeſt; and, on the other hand, the ſaid B granted bond, of date , to the ſaid C, obliging himſelf and his heirs to pay 86ol. Sterling of the price at Whitſunday next, and the remaining 94ol. Sterling at the firſt Whitſunday or Martinmas after the death of the ſaid E, with the intereſt of the ſaid 86ol. to the ſaid C, from Whitſunday laſt, and of the foreſaid liferented part of the price to the ſaid E; yearly, during her life; with this proviſion, that if the ſaid E ſhall be found entitled, in virtue of her ſecurity upon the ſaid lands, to a greater yearly ſum than the legal intereſt of the ſaid 94ol. Sterling for the time, then, and in that caſe, the ſaid B ſhall have retention out of the ſaid principal ſum liferented by her, of whatever he may advance to her more than the legal intereſt, during her life, with the intereſt of that advance from the date of the advance: And which bond contains alſo a penalty of a fifth part more than the ſaid principal ſum, and other uſual claules. AFTER the completing of which tranſaction, the ſaid B having agreed to make over to me the foreſaid lands, purchaſed by him,

him, upon my relieving him of the price, and substituting my bond, in the terms above mentioned, to the said C, in place of his ; and, upon paying him a premium of 10l. Sterling of additional price, the said B has now, in implement of this last agreement, granted a disposition of the premises in my favour, and delivered up to me the progress of writs received from his author ; and thereupon I have, on my part, made payment to him of the said premium of 10l. Sterling, and have retired and delivered up to him the bond above mentioned, granted by him for the price to the said C, who has at this term accepted from me the said sum of 860l. Sterling, with interest from Whitsunday last, being that part of the price of the said lands which is unliferented ; and has condescended and agreed to accept of this present bond for the said liferented price yet unpaid ; wherefore it is reasonable that I should stand bound in manner under written : AND THEREFORE I, by these presents, BIND and OBLIGE me, my heirs and successors, to CONTENT and PAY to the said C, and his heirs, executors or assignees, the foresaid sum of 940l. Sterling, at the first term of Whitsunday or Martinmas next, and immediately after, the death of the said E, with a fifth part more of liquidate expenses, in case of failure : AND FURTHER, I BIND and OBLIGE me and my forefaids, to make payment to the said E, yearly, at the term of Whitsunday, during her life, of  
the

the sum of 47l. Sterling, as the present legal interest of the said principal sum ; and to continue the payment of the like yearly sum to her daughter, during her life, notwithstanding of any falling of the present rate of interest by law ; beginning the first year's payment at Whitsunday , for the year preceding, and so forth at Whitsunday yearly : BUT with this provision always, as it hereby expressly provided, that in case of the falling of interest below 5 *per cent.*, whereby the said principal sum may not yield an annual rent equal to the said annuity of 47l. ; then, and in that event, I shall be entitled to retain, out of the said principal sum, at the death of the said E, whatever sums I may have advanced for making up the said annuity of 47l. Sterling to her during her life, with interest for these advances, from the dates of her receipts for the same : AND with this PROVISION ALSO, that the said C shall, by his acceptance hereof, be holden and obliged to remove from the possession of the house, offices and garden of , and the farm presently in his own natural possession, at the said term of Whitsunday next, without any warning or process of removing for that effect : AND LASTLY, I OBLIGE myself to PAY to the said C, the due and lawful interest of the said principal sum from the first Whitsunday or Martinmas after the death of the said E, during the not-payment : BUT it is always hereby understood and DECLARED, that  
in

in case any incumbrances affecting the said lands shall be discovered to affect the said lands, it shall be lawful to me to apply as much of the said principal sum as may be necessary for disburdening the said lands thereof. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on six days charge, and all other necessary execution, may pass, on a decree to be interponed hereto, in common form ; and for that purpose I CONSTITUTE

my procurators, &c. In witness whereof, &c.

*Bond for Part of the Price of an Estate retained to answer an Annuity, for which other Lands, as well as the Lands sold, stood bound.*

I A, CONSIDERING that B, as deriving right from C, by disposition in his favour, dated has sold and disposed to me, All and Whole

; and which lands had been purchased by C from D, in manner more fully mentioned in the said B's disposition to me, dated , containing the said B's warrandice from fact and deed, and an assignation to the clause of absolute warrandice contained in the said C's disposition to B, but with an exception from the said absolute warrandice of two liferent annuities, payable out

of the said lands and estate ; the one a life rent annuity of 100l. Sterling, payable to D, and the other of the sum of 80l., payable to E, yearly and termly during their respective lives ; and which two life rent annuities do also affect certain parts of the lands and estate of , belonging to F, and the lands and estate of , belonging to G ; so that there is a proportional relief competent to the proprietor of the said lands of , out of the said other estates, in case he shall be distressed for payment of the whole of the said annuities ; as the said disposition in my favour, containing the other usual clauses, with an assignation to the rents from and after , which is hereby declared to be my entry to the possession of the said lands, at more length bears : AND WHEREAS it was expressly communed and agreed upon, at my making the foresaid purchase, that I should retain in my own hands the sum of 1300l. Sterling of the agreed price, for my security and relief of the said two life rent annuities, and any distress or eviction that might happen against the said lands, or me, as proprietor thereof, for payment of the same ; AND THAT I should grant this present bond to the said C, for the said retained sum, payable at the term, and with and under the provisions underwritten : THEREFORE, I hereby BIND and OBLIGE me, my heirs, executors and successors whomsoever, always with and under the provisions underwritten, TO CONTENT and PAY to the said C,

C, and his heirs, executors or assignees, the fore-  
 said sum of 1300l. Sterling, AND THAT at the  
 first term of Whitsunday or Martinmas next and  
 immediately following the decease of the longest  
 liver of the said two annuitants ; WITH 260l. Ster-  
 ling of liquidate expenses in case of failure, TOGE-  
 THER WITH the legal interest of the said principal  
 sum, from the term of Whitsunday next to come,  
 yearly and termly, to the foresaid term of payment,  
 and thereafter, during the not-payment ; BUT with  
 this PROVISION ALWAYS, as it is hereby expressly  
 PROVIDED and DECLARED, that, in case the said  
 C shall not, out of his own proper means and ef-  
 fects, regularly pay and clear off the foresaid an-  
 nuities, and each of them, as the same are alrea-  
 dy, or shall hereafter be, incurred, during the  
 lives of the said annuitants, so as to prevent any  
 distress or real diligence against the said lands of  
 , for payment thereof ; THEN, and in  
 THAT CASE, it shall be lawful for me, and my  
 forefairs, to apply as much of the said retained  
 sum, or annualrents thereof, due at the time, as  
 may be requisite for paying off the said two annu-  
 ities, and each of them, yearly and termly, as the  
 same shall be incurred ; and to take an assignation  
 thereto on payment of the same : DECLARING  
 hereby, that, whatever sum or sums I shall so pay  
 on account of the said two annuities, or either of  
 them, shall compensate and extinguish, so far, the  
 said retained sum of 1300l. Sterling, and interest



due thereupon, contained in this present bond ; and I shall be liable, at the said term of payment, for such balance only as may remain due, after deducting of the said annuities so paid by me. AND I CONSENT to the REGISTRATION, &c. (*in common form.*)

*Bond for Part of the Price of an Estate, narrating the Articles of Roup, and providing for the Case of Arrestments by Creditors ; and providing a Fund for the Claim of the Widow.*

I A, CONSIDERING that the lands of , and others after mentioned, which belonged to B, senior, and to the now deceased B, junior, all lying within the county of , were exposed to a voluntary public roup and sale by the said B senior, C, D and E, a quorum of the trustees named and appointed by the deceased B junior, and B senior, for behoof of their creditors ; and in whose favour, as trustees foresaid, the said Bs, elder and younger, have severally disposed their lands and estates above mentioned, for the payment of the debts due by them ; which trustees have accordingly accepted of the trust, and (at the earnest request of the creditors of the said Bs, elder and younger) sold the said estate by public roup, after due advertisement thereof in the Scottish newspapers, conformably to conditions and articles

articles of roup of the said estate, and procedure following thereon, in manner after mentioned : That is to say, the said articles and conditions of sale, amongst other things, direct, that the said lands and estate should be exposed in four different parcels, and at the prices following, viz. That the first parcel should consist of (*here the parcels were described, and the upset prices fixed.*) And the foresaid respective prices being once offered, every after offer should exceed the immediately former one in 10l. Sterling ; and that the entry of the purchasers should be at Whitsunday ; thus giving them right to the rents, mails and duties, kains, and customs and services of the several parcels of the said estate, payable at the term of Martinmas , for the half year from Whitsunday to Martinmas , and in all time thereafter ; and should be freed of the cels or land-tax due on the 25th March , and of all feu-duty, teind-duty, minister's stipend, school-master's salaries, and other public and parochial burdens, preceding the term of Whitsunday ; and that the purchasers should relieve the sellers, of these burdens in all time thereafter ; and that the respective purchasers should be obliged, in order to implement their several offers, and within thirty days after their declared preferences, to give sufficient security, to the satisfaction of the said trustees, to pay the price which should be offered, at the terms after mentioned : AND FURTHER,

as the said lands and barony of                      stood promiscuously affected with an annuity of 150*l.* Sterling to F, by virtue of the contract of marriage betwixt her and the said B junior, her husband, and in virtue of the investment following thereon; therefore the purchasers were to be allowed to retain 3000*l.* Sterling of the price of the said estate, bearing legal interest, for answering the said annuity; and which retention was to have been made in the several proportions mentioned in the said articles of roup; and the purchasers were to be obliged, not only to grant personal security to the said F, for payment of the said annuity, at two terms in the year, Martinmas and Whitfunday, by equal portions, beginning the first payment thereof at Martinmas                      , and so forth thereafter, during her life; but also for payment to the said trustees of the said retained sum of 3000*l.* Sterling, or so much of that capital as shall not be exhausted by the said annuity, at the first Whitfunday or Martinmas after the death of the said F, with a fifth part of penalty in case of failure; with interest for the retained sum, or so much thereof as shall then remain unexhausted, from the term of Whitfunday or Martinmas immediately preceding her death, and during the non-payment; or, if the said F should be prevailed on to renounce her annuity, the purchasers should pay the retained price within three months after delivering, or making  
ing

ing offer to the purchasers of a proper discharge and renunciation by the said F: And further, by the said articles it is provided, that the security to be granted by the purchasers, for payment of the price of the said estate, and the several parcels above mentioned, besides the said life-rented sum, should be taken and made payable to the said trustees, for the uses, ends and purposes, mentioned in the trust-dispositions referred to in the said articles; DECLARING, that the purchasers should be noways concerned in the application and disposal of the price, neither to the said B senior, nor to the heirs of the said B junior, nor to their creditors; but that discharges to be granted by the said trustees, or any factor or cashier appointed by them, should be full and sufficient exoneration of the price to the purchasers; and that the whole prices, excepting what was life-rented, should be payable at Martinmas,—with interest from Whitsunday, during the non-payment; AND THAT it should be lawful to the purchasers to require assignments from the several creditors of the said Bs, elder and younger, to the extent of the share which each creditor should be entitled to receive out of the price, in order that the purchasers might lead and deduce decrees of constitution and adjudication, adjudging the said estate, in case it should be thought prudent and adviseable so to do; and the purchasers were to be allowed to retain out of the price 50l. Sterling, for

defraying that expenſe: AND it is, moreover, PROVIDED by the ſaid articles, that the ſaid Bs, elder and younger, and the other acting trustees above named, or their quorum, ſhould concur and grant diſpoſitions to the purchaſers, containing all the uſual clauſes, with abſolute warrandice by the ſaid B elder, and warrandice by the trustees, from fact and deed only; and, together therewith, to deliver to the purchaſers ſufficient progreſſes or tranſcripts of the writings of the ſaid eſtate: And it is further thereby declared, that the purchaſers ſhould take their hazard of the expoſer's right to the teinds, and of any claim competent to the family of L, for feu-duty, or otherwiſe, out of the lands of ; and alſo that they ſhould take their hazard of the rental, by which the price, mentioned in the ſaid articles, was ſtruck, and claim no deduction from, or retention of, any part of the price upon theſe accounts; And, moreover, as the eſtate was to be ſold with a view to apply the price honeſtly for the payment of the debts of the ſaid Bs, elder and younger, according to the rule and order of preference, in which the creditors, by the nature of their ſecurities, are entitled to draw the ſaid price; and that it was unaniſouſly agreed, at a meeting of the ſaid creditors, that the price ſhould be divided by proper perſons, and that no creditor ſhould proceed by diligence to anticipate others, and thereby force the reſt to do the like,  
and

and so multiply expenses: THEREFORE it is declared, by the said articles, that the price of the said estate should not be subject to arrestment; but that all arrestments should be void and null; and in case the amicable measures, projected by the creditors for dividing the price, should not take effect, that the same should only be adjudgeable, or, at least, all adjudgers or arresters, thereof, within year and day of the first, should come in *pari passu*: And if such arrestments should be used, the same should be discussed by the said trustees or creditors themselves, so as to enable the purchasers to pay with safety; and, in case of any difference arising betwixt the purchasers and exposers, concerning the implement of the bargain, the same is thereby agreed to be submitted to an arbiter to be chosen in manner therein directed; and Mr \_\_\_\_\_ is thereby constituted judge of the roup; and the whole of the forementioned articles, in so far as prestable by the exposers, were to be performed under the penalty of 100l. Sterling, and were to be subscribed by the purchasers, and performed, in so far as the same was prestable by them, under the like penalty; as, in the said articles and conditions of sale, at more length is expressed. IN CONSEQUENCE of which articles and conditions of roup and sale, and agreeably thereto, the said lands and estate, being on the \_\_\_\_\_ day of \_\_\_\_\_, between the hours of \_\_\_\_\_ and \_\_\_\_\_, in \_\_\_\_\_ Coffeehouse, set

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set up to sale in the four several parcels or lots above-mentioned; and I having appeared at the said sale, and offered for each of the four parcels respectively, the prices set thereupon, viz. (*here the prices were set down*), and no other person making any higher offer, I was, by the said , judge of the said roup, preferred to the purchase of all and every one of the said four parcels of lands, of which the said estate was composed, and declared to be the purchaser thereof; and I did accordingly enact myself, in terms of the articles of sale above recited, for payment of the price of the said four parcels, which compose the said whole estate, amounting to the sum of 18,221l. 11s. sterling, and for performance of the whole other articles and conditions prestable on the part of the buyer; the exposers always implementing and performing to me the whole conditions incumbent on them by the forementioned articles, and that conformably to a minute of roup subjoined to the said articles of sale, subscribed by the said Mr , judge of the roup, and by me, and by the said trustees, bearing date :

AND SEEING that, in terms of the said articles and conditions of roup and sale, and minute of roup, declaration of preference in my favour, and enactment aforesaid, the said trustees, and the said B elder, for himself, for any separate interest whatsoever in him, have concurred in, and granted, a disposition to me, my heirs and assignees

nees, heritably and irredeemably, of the said whole lands and estate of , and others above-mentioned, containing an assignation to the mails and duties thereof, from the term of Whitsunday , and in time coming, with other usual clauses ; AND together therewith, have delivered up to me, a satisfactory progress of the writs of the said estate, and reported to me proper receipts and discharges of all the public burdens due out of the said estate, preceding the terms herein above expressed ; and thereby have implemented to me the said articles and conditions of sale, so far as was incumbent on them : AND it being reasonable, that the said trustees should be fully secured in payment of the price of the said lands and estate, amounting in whole to the said sum of 18,221l. 11s. Sterling, in terms of the said articles, whereby 3000l. Sterling thereof is not to be paid till after the death of the said F ; therefore I the said A, and M, do hereby BIND and OBLIGE ourselves, conjunctly and severally, our heirs, executors and successors whomsoever, (renouncing the benefit of discussing our heirs in order or priority), TO CONTENT and PAY to the said C, D and E, and to the major part of them surviving, as trustees for, and to the uses, ends and purposes, mentioned in the two dispositions in trust above referred to, the one granted by the said deceased B younger, dated , and the other by the said B elder, dated ; NOT ONLY the sum of 15,221l. 10s. Sterling, being the amount of the  
unliferented



unliferented price of the said lands and estate, at the term of Whitsunday next to come, in the year           , with a fifth part more than the said sum, of liquidate penalty in case of failure, and interest of the said unliferented part of the price, from the said term of Whitsunday last to the foresaid term of payment, and yearly, termly, and continually thereafter, during the not payment thereof; BUT ALSO, the said sum of 3000l. Sterling, retained by me, the said A, in consideration of the foresaid liferent annuity, and that at the first Whitsunday or Martinmas after the death of the said F, the liferentrix, with a fifth part more of liquidate expenses in case of failure; WITH interest of the said liferented sum, from the term at which her liferent shall cease and determine; BUT ALSO, with and under the DECLARATIONS, CONDITIONS and PROVISIONS, before and after mentioned, contained in the said articles, viz. DECLARING, that neither we, nor either of us the said A and M, shall be any ways concerned in the application of the said price, or any part thereof, either to the said B elder, or to the heirs of the said deceased B, younger, or to their creditors; but that discharges to be granted by the said trustees, or any factor or cashier to be appointed by them, shall be full and sufficient exonerations to both, and each of us, of the said price, as well that part thereof which is unliferented, as that which is liferented; AND with this PROVISION ALSO, that in case the  
said

faid F shall habilely renounce and discharge the said liferent annuity, then, upon delivery, or tendering to us, or either of us, an extract of her discharge and renunciation, duly executed and registered in the record of sasines, and in the books of Council and Session, we shall be obliged to pay the said 3000l. Sterling of retained price, and the annual-rents thereof, from the term of Whitsunday or Martinmas immediately preceding the renunciation, and that at the first of the said two terms which shall happen, three months after delivering, or offering to deliver, to us, or either of us, the extract of the said discharge and renunciation: BUT DECLARING ALWAYS, that in case interest shall fall below five per cent. whereby the interest of the said retained sum will not be sufficient for answering the said yearly annuity; in that case, at the extinction of the said liferent, we shall be entitled to deduction, out of the capital of the said retained price, of a sum suitable to the loss which I, the said A, shall have sustained, through payment of the said annuity, after the interest shall have fallen below five per cent. as said is; AND, with this PROVISION ALSO, that it shall be lawful to me, the said A, to require from the several creditors of the said Bs, elder and younger, assignments of their debts, to the extent of the several shares that each creditor shall be entitled to receive of the said price, to the end, if I shall think fit, that I may lead and deduce decrees of constitution

tution and adjudication, adjudging the said estate from the said B elder, and the heirs of the said B younger, in further security of my said purchase ; AND with this PROVISION ALSO, that the foresaid whole price, as well that part thereof which is unliferented, as the liferented part thereof, shall not be subject to, or attachable by, any arrestments ; but. that all arrestments thereof shall be void and null : And, in case the amicable measures projected by the creditors, for dividing the price, shall not take effect, then the same shall only be adjudgeable, or, at least, that the arresters or adjudgers thereof, within year and day of the first arrester or adjudger, shall come in *pari passu* ; BUT DECLARING, that we are not to take our hazard of the said arrestments or adjudications of the price, in case any such shall be used, but the same are to be discussed, and all questions whatsoever in relation to the price, adjusted, by the trustees or creditors aforesaid, for whom the said trustees are acting, at the charges and expenses of the said creditors, so as we may pay the said price safely, and without any danger of after challenge on that point. AND LASTLY, WHEREAS, by the above recited articles, it is provided, that the purchaser of the said estate should not only be at freedom to take assignments from the creditors, to the debts due by the said Bs, elder and younger, and to be paid out of the price, and to lead decrees of constitution and adjudication thereupon,

upon, in further security of the purchase: But ALSO, if it should be thought prudent and necessary so to do, by the judgment of arbiters, the purchaser should be allowed deduction of the sum of 50l. Sterling out of the price, for defraying that expense: And now, I the said A, having made a calculation of the charge that the said decrees of constitution and adjudication may cost, and which adjudications I am still resolved to deduce, I hereby condescend and agree to restrict the foresaid deduction of 50l. Sterling, to the sum of 25l. Sterling, which is to be discounted to me out of the said price, as at Whitsunday last; and, although the diligence to be led by me on the conveyances to be obtained from the creditors, may require or cost a greater sum; yet, I am to demand no further deduction, than the said sum of 25l. Sterling on that account: AND I CONSENT, &c.

There is one example more of the bond of borrowed money, which I shall add: it is, where an assignation is given in further security of the debt; and I shall subjoin different forms of the deed.

*Bond and Assignation in Security.*

I A, grant me instantly to have borrowed from B the sum of 100l. Sterling, whereof I acknowledge

knowledge the receipt; WHICH SUM of 100l. STERLING I BIND and OBLIGE me, and my heirs, executors and successors whomsoever, to CONTENT and REPAY to the said B, and his heirs or assignees, (secluding his executors, not only from the said principal sum itself, but also from any interest or expense that may fall due, or be incurred, in virtue of this present bond), and that at and against the term of Lammas next to come, with the sum of 20l. Sterling of liquidate expenses in case of failure; TOGETHER ALSO with the due and legal interest of the said principal sum from the date hereof to the said term of payment, and yearly, termly, and continually thereafter, during the not payment of the said principal sum: AND, for the said B and his foresaids their FURTHER SECURITY, and more certain payment of the said sums of money, principal, interest and penalty, I, by these presents, MAKE, CONSTITUTE and ORDAIN the said B, and his foresaids, my irrevocable cessioners and assignees in and to as much of the sum of 200l. Sterling, and bygone annualrents thereof, and liquidate expenses, contained in a bond granted by C to me, bearing date , as will completely satisfy and repay to the said B, and his foresaids, the said sum of 100l. Sterling, annualrents thereof resting for the time, and liquidate expenses above expressed, for which this present bond is granted; WITH full power to him, and his foresaids, to ask and uplift as much of the sums of money hereby assigned as will completely satisfy and

and pay them as aforesaid, or to dispose thereupon at their pleasure; and, if needful, to charge and pursue therefor, decrees thereupon to recover, and to cause the same be put to due execution; grant receipts and discharges therefor, which shall be valid to the receivers; and generally every other thing in the premises to do, which I might have done myself, before granting hereof: **AND I BIND and OBLIGE me to WARRANT** this assignation from all facts and deeds done or to be done by me in prejudice hereof: **BUT PROVIDING ALWAYS**, that the said B, and his forefairs, on my paying to him or them the foresaid sums, principal, interest and penalty, due by this bond, shall be bound and obliged, as, by accepting hereof, they bind and oblige themselves, to retrocess me and my forefairs in the full right of the bond above assigned, conveyed by me to them in security as aforesaid; and whatever they shall recover in virtue of the said assignation, they shall be bound to impute in part of the debt hereby constituted, after deducting any necessary expense they may be put to: and the surplus, if there shall be any, they, by acceptance hereof, become bound to pay to me, my heirs or assignees, with interest from the time the said debt shall be recovered: **AND I have herewith delivered up the said bond granted to me by the said C, to be kept by the said B for his further security, as aforesaid: AND I hereby ACKNOWLEDGE and DECLARE**, that there are no annualrents resting by the said C to me, for

the said principal sum, preceding Whitsunday last ; and that he has also paid to me 30l. Sterling, in part of the said principal sum, and interest thereof since Whitsunday last : AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on six days charge, and all other execution necessary, may pass on a decree to be interponed hereto, in common form ; and, for that purpose, I CONSTITUTE

my procurators, &c.

In witness whereof, &c.

*Bond and Assignment to House Rents in Security.*

I A, grant me instantly to have borrowed from B, &c. (*the bond proceeds in common form, as in the preceding example*) : AND, for the said B his FURTHER SECURITY, and more certain payment of the foresaid sums of money, principal, interest and penalty, I hereby MAKE and CONSTITUTE him, and his foresaids, my lawful and irrevocable cessioners and assignees, IN and TO the sum of 25l. Sterling of yearly rent, due to me by C, for the second storey of that house in Hanover Street, New Edinburgh, being No. 20, contained in the said C's letter of tack to me, of date , whereof five years are yet to run ; AS ALSO, IN and TO the sum of 30l. Sterling of yearly rent, payable to me by D, for that shop and warehouse, situated,

situated, &c. or whatever sum the same may bring of yearly rent; SURROGATING and SUBSTITUTING the said B, and his forefairs, in my full right and place of the premises, and that until he shall be repaid of the foresaid principal sum, interest and penalty above expressed, and of all expenses he may be put to in recovering payment of the said rents; WITH full power to him, and to his forefairs, to demand, sue for, and recover payment of the foresaid rents; receipts and discharges to grant, which shall be sufficient to the receivers; and generally every other thing to do in the premises which I could have done before granting hereof: WHICH ASSIGNATION above written I BIND and OBLIGE myself, and my forefairs, to warrant to the said B, and his forefairs, from all facts and deeds done or to be done by me in prejudice hereof: BUT DECLARING ALWAYS, as it is hereby expressly DECLARED, that the said B, or his forefairs, shall in no ways be bound to do diligence for recovering the said rents, nor liable for omissions; but shall only be bound to apply what sums they shall receive, in consequence of this conveyance, (after deducting any expense they may have incurred), in satisfaction of the sums of money hereby due. AND, having delivered to the said B the foresaid missive of tack betwixt C and me, I CONSENT to the REGISTRATION hereof, &c. (*in common form, as in the preceding example.*)



*Bond and Assignment to a Security over Land  
vested in Trustees.*

I A, grant me to have borrowed, &c. (*the bond  
will be expressed in common form*): AND WHERE-  
AS C, by his bond, dated , bound and  
obliged himself, his heirs, executors and succes-  
sors whomsoever, to make payment to me, my  
heirs, executors or assignees, of the like sum of  
700l. Sterling, at the term of Martinmas ,  
with 140l. of penalty in case of failure, and the  
legal interest of the said principal sum from the  
term of Whitsunday preceding to the said term of  
payment, and yearly, termly, and continually  
thereafter, during the not payment of the same,  
in manner more fully mentioned in the said bond,  
which is registered, &c. ; And that the said C,  
by disposition of date , disposed his  
lands and estate of to D and E in trust,  
for the purposes therein mentioned, and, *inter  
alia*, with the burden of the payment of the sums  
contained in, and due by the said bond in my fa-  
vour, which is thereby declared to be a real bur-  
den on the said lands and estate, and wherein the  
said trustees have been infeft ; WHICH DISPOSI-  
TION is recorded in the books of Session ,  
and the sasine following thereon is recorded in the  
general register at Edinburgh : AND SEE-  
ING that I am desirous of securing the said B,  
and

and his forefaids, in the payment of the faid fums of money, principal, interest and penalty hereby due; THEREFORE, I do hereby DISPONE, ASSIGN, CONVEY and MAKE OVER, to and in favour of the faid B, and his forefaids, the faid fum of 700l. Sterling of principal, 140l. like money of penalty, and the legal interest of the faid principal fum from and fince the term of Whitsunday , and in time coming, all contained in the faid bond granted by the faid C to me, above recited, AND the faid bond itfelf, and all action and execution which has followed, or may follow thereon; TOGETHER WITH the real fupervening fecurity created in my favour by the forefaid trust-difpofition and infeftment following thereon; AND with full power to the faid B, and his forefaids, whom I hereby SURROGATE and SUBSTITUTE in my full right and place of the premises, to uplift, fue for, convey or difcharge, the fums, principal, interest and penalty hereby conveyed, with the bond and fupervening fecurity above mentioned; I and my forefaids always freeing and relieving him, and his forefaids, of any expenfe which may attend the difcharging or conveying the fame; and, in general, with power to do every thing that I could have done myfelf, in regard to the premises, before granting this conveyance; which I OBLIGE myfelf, and my heirs and fucceffors, to WARRANT to the faid B, and his forefaids, from our own acts and deeds: PROVIDING and DECLARING

ALWAYS, that upon the said B, and his forefaids, their obtaining payment of the fums hereby assigned, then the present obligation for payment of the fums, in security of which this conveyance is granted, shall, *ipso facto*, become void and null, to the extent of the fums so received. AND, having herewith delivered up to him an extract of the said bond, I CONSENT to the REGISTRATION, &c.

There is one example more I shall give of the bond and assignation in security; but, as it conveys moveables in security of the debt, which are still to remain in possession of the original proprietor, the security which it affords, will not stand in competition with the diligence of creditors.

*Bond and Disposition of Moveables in Security.*

I A, grant me to have borrowed from C, &c. (*here the bond will be expressed in the common form*): AND for the said C, and his forefaids, their further security, and more sure payment of the fums above mentioned, I hereby assign and dispoise to the said C, and his forefaids, all the corns, horses, and implements of husbandry on my farm of , agreeably to an inventory thereof, hereto subjoined, and subscribed by

by me as relative hereto ; **DECLARING**, as I hereby **DECLARE**, that I hold the said effects in trust for the said C, till he be paid the sums of money, principal, interest, and penalty above mentioned ; and if I sell any part of the said effects, I hereby oblige myself to account for the same ; and, in case I shall purchase any addition thereto, the same shall, and are hereby declared to be included in this conveyance, without any other document ; with full power to the said C to intermeddle with, and dispose of the said subjects, without any further warrant than this assignation, after the foresaid term of payment ; and I oblige myself, and my forebears, to warrant this disposition and assignation, to the subjects hereby conveyed to the said C, and his successors, at all hands. **AND I CONSENT** to the **REGISTRATION**, &c.

This deed may be accompanied by an instrument of possession, of which this will be the form—

*Instrument of Possession.*

**AT**                      the        day of                      , **IN**  
**PRESENCE** of me, notary public, and of the witnesses after named and subscribing, compeared personally C, to whom, and in whose favour, the

bond and disposition in security aftermentioned is made and granted ; and with us passed to the personal presence of A, the said C HAVING and HOLDING in his hands the said bond and disposition, dated , made and granted by B ; whereby, for the causes therein specified, the said A THEREBY ASSIGNED and DISPONED from him, his heirs, executors and successors, to and in favour of the said C, his heirs, executors or assignees, for their further security and more sure payment of the sums of money, principal, interest and penalties, contained in the said bond, all the corns, horses, and implements of husbandry, in his farm of , agreeably to an inventory thereof, thereto subjoined, and signed by him, as relative thereto ; as the said bond and disposition, containing clause of warrandice, and other necessary clauses, with the inventory thereto annexed, in themselves more fully bear : WHICH bond and disposition in security, with the inventory thereto annexed, the said C exhibited and presented to the said A, desiring him, *ex propriis suis manibus*, to deliver to him real, actual, and corporal possession of the articles above expressed, contained in the said disposition and inventory ; WHICH REQUEST being just and reasonable, the said A accepted and received the said disposition and inventory into his hands, and gave the same to me, notary public, to be read and published in presence of the witnesses after named ; ALL  
WHICH

WHICH I accordingly DID. After READING and PUBLISHING of which disposition and inventory, in manner foresaid, the said A, for implementing the said right and disposition, gave and delivered to the said C, *ex propriis suis manibus*, real, actual and corporal possession of the different articles in the said inventory, and that by delivering to the said C an individual of each species in the said inventory, as use is, all to be possessed and enjoyed by the said C, and his forebears, in time coming, agreeably to the tenor of the bond and disposition in security, and inventory above mentioned in all points; WHEREUPON, and upon ALL and SUNDRY the premises, the said C took instruments in the hands of me, notary public, subscribing. THESE THINGS were so done successively, AT and within the barn-yard, court-yard, and fields of the said farm, where the said corns, horses, and implements of husbandry as afore said, then were, BETWIXT the hours of and , before and in presence of R and S, witnesses to the premises, specially called and required.

*Quæ attestor.*

R, witness.

F— N. P.

S, witness.

These examples will suffice for the common case of bonds for borrowed money, or where the bond comes in place of money which

ought to have been instantly advanced; and I shall, to complete this view, give examples of the bond of corroboration, before proceeding to those cases where the cause of granting, or the nature of the security, is different.

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### BOND OF CORROBORATION.

THE bond of corroboration is of use in different situations: for, 1. When the debtor and creditor are both alive, it may be of use in accumulating the debt, and making the whole bear interest: 2. On the death of the creditor, the debtor may give a renewal of the debt in favour of the creditor's heir; which will save the expense of completing a title in the person of the heir, will place him in the same situation with his ancestor, and give him access to immediate diligence against the debtor: Or, 3. On the death of the debtor, a bond of corroboration may be given by his heir, to save the expense of a decree of constitution at the instance of the creditor; and it is in this order I shall present the examples of this deed.

*Bond*

**Bond of Corroboration, accumulating the Debt,  
Principal and Interest, into a new principal  
Sum.**

I A, CONSIDERING that, by bond, of date  
, for the causes therein specified, I  
bound and obliged myself, my heirs, executors  
and successors, to make payment to B, his heirs,  
executors and assignees, of the principal sum of  
500l. Sterling, and that at the term of Martin-  
mas ; with the sum of 100l. Sterling of  
liquidate penalty, in case of failure ; together  
with the legal interest of the said principal sum,  
from the date of the said bond to the foresaid  
term of payment, and yearly, and termly, and  
continually thereafter, during the not payment,  
as the said bond in itself more fully bears. AND  
NOW, SEEING that the foresaid principal sum,  
with interest thereof from and since the term of  
Martinmas , are still resting owing and  
unpaid, extending, when accumulated, at the date  
hereof, to the sum of 550l. Sterling ; AND THAT  
the said B has agreed to supersede payment of  
the said accumulated sum of 550l. Sterling to the  
term of Whitsunday next, on my granting these  
presents in manner underwritten : THEREFORE  
I do hereby, IN CORROBORATION of the ORIGI-  
NAL BOND above narrated, and without preju-  
dice thereto, or to any diligence that has follow-  
ed;



ed, or may follow thereon, *sed accumulando jura juribus*, BIND and OBLIGE me, my heirs, executors and successors, to make payment to the said B, his heirs, executors or assignees, of the fore-said ACCUMULATED SUM of 550l. STERLING, and that at the term of Whitsunday next; with 110l. Sterling of liquidate penalty, in case of failure, and the due and ordinary interest of the said principal accumulated sum, from the date hereof to the said term of payment, and yearly and termly thereafter, during the not-payment of the same. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judge's books competent, that letters of horning on six days charge, and all other execution necessary may pass, on a decree to be interposed hereto, in common form; AND for that purpose, I CONSTITUTE MY PROCURATORS, &c. In witness whereof, &c.

*Where an additional Loan is made.*

Sometimes it may happen that a further advance is made by the creditor, and that the whole is accumulated into one sum: In that case, after narrating the original bond, as in the preceding example, you will proceed in this manner: ' AND SEEING that the said  
' B

‘ B has NOT ONLY agreed to supersede pay-  
 ‘ ment of the foresaid sum of 500l. Sterling,  
 ‘ and interest thereof, contained in the said  
 ‘ bond resting unpaid at this date, extending  
 ‘ to the sum of 525l. Sterling, to the term of  
 ‘ payment after mentioned; BUT HAS ALSO  
 ‘ instantly advanced and paid to me the sum  
 ‘ 500l. Sterling; amounting together, the said  
 ‘ two sums, to the accumulated sum of 1025l.  
 ‘ Sterling, on condition of my granting these  
 ‘ presents in manner underwritten: THERE-  
 ‘ FORE, IN CORROBORATION,’ &c. (*as in  
 the preceding example.*)

*When the Corroboration is given in favour of an  
 Assignee.*

After narrating the bond, as in the first ex-  
 ample, you add—‘ To which bond, and sums  
 ‘ of money thereby due, C has now acquired  
 ‘ right, by assignation from the said B in his  
 ‘ favour, dated \_\_\_\_\_, and intimated  
 ‘ \_\_\_\_\_ : AND SEEING that the foresaid  
 ‘ principal sum, with interest thereof, from and  
 ‘ since \_\_\_\_\_, are still resting owing and  
 ‘ unpaid, extending, when accumulated,’ &c.  
 (*as in the first example.*)

*Bond*

*Bond of Corroboration, accumulating Annualrents, due in consequence of a Transaction betwixt the Purchaser of an Estate and the Seller, entitled to the Reversion of a Sum set apart for an Annuity.*

I A, CONSIDERING that B did, upon his purchasing the lands and estate of                      from me, grant an heritable bond in my favour, bearing date                      , for the principal sum of 1000l. Sterling, payable at the first Whitsunday or Martinmas after the death of Mrs C, who liferented a part of the said lands, equal to the interest of the said sum; with 200l. Sterling of penalty, in case of failure, and interest of the said principal sum after the foresaid term of payment; and for security whereof, the said B became bound to infest me in an annualrent of 50l. Sterling, as corresponding to the said principal sum of 1000l. Sterling, payable out of the said lands and estate; AND, in virtue of which heritable bond and precept of sasine therein contained, I accordingly stand infest: AND FURTHER CONSIDERING, that I have been obliged to borrow from D the sum of 700l. Sterling, for which I granted bond to the said D, of date                      , whereby I became bound to content and pay to the said D, and his heirs or assignees, the said sum of 700l. Sterling, at the first Whitsunday or Martinmas after the death

death of the said C, with 140l. Sterling of penalty in case of failure, and interest of the said principal sum from Martinmas to the said term of payment, and thereafter as long as the same shall remain unpaid ; declaring, that although the said D has superseded the payment of the said principal sum till the first Whitsunday or Martinmas after the death of the said C, yet it should be lawful for him to use diligence for recovering the interest thereof from time to time, as the same may become due : **AND, FOR FURTHER SECURITY** of the said principal sum of 700l. Sterling, so borrowed, interest thereof, and liquidate penalty above mentioned, I made over to the said D, and became bound to invest him in as much of the said annualrent of 50l. Sterling, effecting to the said principal sum of 1000l. Sterling, and as much of the said principal sum of 1000l. Sterling itself, secured as said is, on the said lands and estate of , as might answer the same : By virtue of which last bond, containing a disposition in security, and precept of fasine, the said D stands also invest : **AND FURTHER**, for an additional security to the said D, the said B, by an heritable obligation, dated , relative to the two heritable bonds above narrated, obliged him to content and pay the said D the interest of the said principal sum of 700l. Sterling, from the term of Martinmas , yearly, at Whitsunday and Martinmas, by equal portions, beginning

beginning the first term's payment thereof at Whitsunday , and so forth, termly thereafter, till the death of the said C, when the principal sum becomes due; with 3l. 10s. Sterling, for each term's failure; and became bound to infect the said D in an annualrent of 35l. Sterling out of the said lands and estate of , and granted precept of sasine for that effect; in virtue whereof, the said D was also therein infected: AND the said D having anxiously demanded up the said principal sum of 700l. Sterling, and bygone interest thereof, due from the said term of Martinmas , the said B did not only prevail with E and F to pay up the said principal sum of 700l. Sterling, on the , to the said D, who conveyed the same, with his securities therefor above mentioned, to the said E and F; but also the said B made payment himself to the said D of the sum of 197l. 4s. 9d. Sterling, as the interest of the said principal sum of 700l. Sterling, from the said term of Martinmas , to the said last, with 5l. 3s. as the expense of taking and registering the foresaid two infections in favour of the said D, conformably to a discharge and assignation of the said interest and expenses granted by the said D to the said B, bearing date ; to the effect he might operate his relief thereof from me. AND SEEING that the said B became bound for the regular payment of the interest of the said principal sum,

out of friendship for me, and for my accommodation; and that the sum of 197l. 4s. 9d., and 5l. 3s., amounting, in all, to 202l. 7s. 9d., is still due to him; and that it is just and reasonable that he should be secured in payment thereof, with interest from the period of advance; THEREFORE I hereby BIND and OBLIGE me, my heirs, executors and successors whomsoever, IN CORROBORATION, and without prejudice to the said B's rights and securities, to CONTENT and PAY to the said B, his heirs or assignees (secluding executors), the foresaid accumulated sum of 202l. 7s. 9d. Sterling, and that at and against the term of Whitsunday next; with 40l. Sterling of liquidate penalty, in case of failure; together with the legal interest of the said accumulated principal sum, from the said                      last, to the foresaid term of payment; and yearly, termly and continually thereafter, during the not-payment thereof. AND I CONSENT to the REGISTRATION, &c, (*in common form.*)

*Bond of Corroboration of a Bond, and Adjudication following thereon, accumulating the Principal in the Adjudication, and Annualrents.*

I A, CONSIDERING that I and the late A, my father, by our bond, dated                      , for the causes therein specified, bound and obliged us,                      conjunctly

conjunctly and severally, our heirs, executors and successors whatsoever, to content and pay to B, his heirs or assignees, including his executors, and that at the term of Whitsunday , the sum of 6000l. Sterling of principal, with a fifth part more of liquidate expenses in case of failure; together with the legal interest of the said principal sum, from the date of the foresaid bond to the term of payment above mentioned; and yearly, termly and proportionally thereafter, during the not-payment, as the said bond, registered in the Commissary Court books of , on the , more fully bears: AND that, upon the , the said B obtained decree of adjudication, at his instance, before the Lords of Council and Session, against my said father and me, ADJUDGING, DECERNING and DECLARING the ground-right and property of the lands and others after mentioned, pertaining, heritably or otherwise, to my said deceased father and me, viz. ALL and WHOLE (*here the lands were described*), to PERTAIN and BELONG to him, the said B, his heirs or assignees, heritably, for payment and satisfaction to him, and his forefathers, of the foresaid sum of 6000l. Sterling of principal, and annualrents thereof, resting from and since the said ; and of the sum of 1200l. Sterling, being a fifth part of the said principal sum, of liquidate expenses, contained in, and due by, the foresaid bond, extending in whole, at the date of the

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the

the said decree of adjudication, to the accumulated sum of 10,251l. Sterling, *salvo justo calculo*. AND SEEING that the foresaid accumulated sum, contained in the said decree of adjudication, composed of the foresaid principal sum, and bygone annualrents thereof, and penalty aforesaid, due by virtue of the said original bond, is yet justly resting, with the annualrents of the said accumulated sum, from the said ; extending the said accumulated sum, and bygone interest thereof, at the term of Lammas last, to the total sum of 11,523l. Sterling ; and that the said B has agreed to supersede payment of the same to the term of Whitsunday next to come, on my becoming bound in manner underwritten : THEREFORE I, the said A, do hereby BIND and OBLIGE me, my heirs, executors and successors whatsoever, (in CORROBORATION, and without prejudice to the original bond above narrated, and decree of adjudication obtained thereon, *sed accumulando jura juribus*), to CONTENT and PAY to the said B, and his heirs and assignees (secluding his executors) the foresaid total accumulated sum of 11,523l. Sterling, and that at and against the term of Whitsunday , with a fifth part more of liquidate penalty, in case of failure ; together also with the due and ordinary interest of the said principal accumulated sum, from the said term of Lammas last bypast to the foresaid term of payment, and yearly, termly and continually thereafter, during

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the not-payment thereof; WITH this PROVISION ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that on my paying to the said B, or his forefaids, the foresaid accumulated sum, and interest thereof, and penalty, if incurred, he shall be holden and obliged to transmit and convey to me, or my forefaids, the foresaid original bond and sums of money, principal, annualrents and expenses therein contained, with the foresaid decree of adjudication, and lands and others thereby adjudged, and the accumulated sum above-mentioned, therein contained; with warrandice from his own fact and deed only: But with an exception and reservation, in his own favour, of the said decree of adjudication, and lands and others foresaid, hereby adjudged, in so far as the same concerns, or may be extended, to the said B his security and relief of the sum of 500*l.* Sterling, annualrents thereof, and penalty, for which the said B became bound, as cautioner for my said deceased father to E, in a suspension of a charge for the said sum, alleged to be due by my said father to the said E; and for security and relief of which engagement, the said decree of adjudication is also led: AND DECLARING, that I shall not be at liberty, on any conveyance to be granted to me by the said B, of the foresaid bond and decree of adjudication, to compete with him, or oppose his preference, on the said lands, for relief of the said cautionary engagement.

gagement. AND I CONSENT to the REGISTRATION, &c.



*Bond of Corroboration, where a new Obligant interposes his Credit for one of the original Debtors.*

I A, CONSIDERING that there was an agreement entered into on the , betwixt B, on the one part, and C and D, on the other part; reciting, that the said B, as a creditor on the forfeited estate of , had obtained a decree, &c. decreeing and adjudging to him the sum of 4150 merks, with interest from ; and subsuming, that the said C and D had, in satisfaction of these sums, agreed to make payment of the sum after-mentioned; THEREFORE, the said B, on the ONE PART, thereby bound and obliged him and his heirs, to subscribe, and deliver, a valid disposition and conveyance of the said decree and grounds thereof, in favour of the said C, who purchased the estate of , and which disposition should be granted with consent of , and should be delivered betwixt and the term of Martinmas thereafter; AND, on the OTHER PART, the said C and D bound and obliged them, and their heirs and successors, jointly and severally, to make payment and satisfaction to the said B, and his heirs and assignees,

of the sum of 5005l. 13s. 4d. Scots, the sum agreed on betwixt them, as coming in satisfaction of the whole sums contained in the said decree, as at the term of Whitsunday , and 1000l. money foresaid, of liquidate expenses in case of failure ; DECLARING ALWAYS, that whatever sums should, betwixt and be instructed to have been paid to , by receipts or discharges, such sums should be discounted from the foresaid sum thereby agreed on, as at the time when such payments were made ; IN CONSEQUENCE of which AGREEMENT, the said B did, in implement of his part thereof, dispoise and convey to the said C, purchaser of the said estate of , the said decree and grounds thereof, and sums therein contained, in virtue whereof the said C received allowance of part of the sums contained in the said decree, out of the price of the said estate : And there being recovered and produced to the said B, receipts by the said , dated for the sum of 1800 merks, which, in terms of the above agreement, falls to be discounted from the sums decreed for, as of the date of the payments ; and an account thereof being made out betwixt the said parties, it appeared, on a fair state of the transaction, that the balance remaining due to the said B on the , amounted to the sum of 1712l. 4s. 4d. Scots ; which sum, with interest thereof, to the term of Whitsunday , being accumulated into .

into one sum, extends, at that term, to the sum of 4323l. 6s. 6d. Scots money; to which sum the foresaid sum of 5005l. 13s. 4d. Scots, in terms of the said agreement, falls to be restricted: **AND SEEING** that the said sum of 4323l. 6s. 6d. Scots, with the interest thereof, since the said term of Whitsunday , to the term of Lammas last bypast , is all yet justly resting, except the sum of 240l. Scots, and the sum of 1000 merks, paid to the said B, of date , as appearing from his receipts; and that, after deduction of these partial payments, there remains due to the said B, of principal and bygone interest, in terms of the said agreement, as at the term of Lammas , the total accumulated sum of 6696l. 4s. Scots; **AND ALSO SEEING**, that the said B is proceeding to use all manner of legal diligence against the representatives of the said C, now deceased, who is jointly bound by the said agreement, and against his means and estate, heritable and moveable, which may be attended with very great loss, and that the said B has agreed to supersede further diligence against the representatives or estate of the said C, on my becoming bound in manner underwritten: **THEREFORE**, I hereby **BIND** and **OBLIGE** me, my heirs, executors and successors whomsoever, to make payment to the said B, and his heirs and assignees, of the said sum of 6696l. 4s. Scots money, by the proportions following, viz. the sum of 1200l. Scots

money at each term of Martimas yearly, until the said accumulated sum shall be completely satisfied and paid, with interest thereof, from the term of Lammas last, during the not-payment ; beginning the first year's payment of the said 1200l. Scots at the term of Martinmas , and so forth yearly thereafter, at each term of Martinmas, till the foresaid principal sum, and interest thereof from the said term of Lammas last, shall be fully satisfied and paid, with 240l. Scots of liquidate expenses for each year's failure : WITH this PROVISION always, that these presents, and the said B's acceptance thereof, shall nowise hurt, innovate or prejudice the said agreement, and the obligation on the said D, for payment of the sums of money above mentioned ; NEITHER shall it any way stop the said B, from using all manner of legal diligence against the said D, or his forefairs, real or personal, for recovering thereof ; AND with THIS PROVISION ALSO, that on my making payment to the said B, or his forefairs, of the said sum of 1200l. Scots yearly, he shall be bound and obliged to transmit and convey to me, as much of the foresaid sums due to him, in virtue of the foresaid agreement, as I shall so advance and pay, to the end I may operate my reimbursement from all and every one of the said persons bound by the foresaid agreement, and from their heirs and representatives, with whatever diligence may be in his person against their lands

lands and estate, in security of the foresaid debt. AND I CONSENT to the REGISTRATION hereof, &c.

These examples will sufficiently point out the nature of the deed where a further security is to be given to the creditor; and I shall now give examples of the deed where it is to supply a title.

*Bond of Corroboration to the Heirs of the Creditor to supply a Title by Confirmation.*

I A, CONSIDERING that A, my father, now deceased, and I (designated in the bond after narrated, A younger of                   ), by our bond bearing date                   , for the causes therein specified, bound and obliged us, conjunctly and severally, our heirs, as well male, tailzie, conquest and provision, as of line, (renouncing thereby the benefit of the order of discussing them), and our heirs and successors whomsoever, TO CONTENT and RE-PAY to B (now deceased), or to his heirs, executors or assignees, the sum of 1000l. Sterling of principal, at and against the term of Martinmas                   , with 200l. Sterling of liquidate penalty in case of failure, and interest of the said principal sum from the term of Whitsunday                   , to the  
G 4                   fore said

foresaid term of payment, and yearly and termly thereafter, during the not payment, as the said bond more fully bears; To which BOND and sums of money, principal, interest and liquidate expenses therein contained, B, eldest son of the said deceased B, has now right, in terms of a general disposition of all debts and sums of money, heritable and moveable, with all bonds, bills and vouchers thereof, granted by the said deceased B, in favour of his said son, dated , and registered in the books of Council and Session, office ; which disposition contains a nomination of C, D, E and F, to be tutors and curators to the said B his son, and his other children, during the whole time of their respective pupilarities and minorities, the said C being always *sine quo non*, as in the said general disposition is at more length exprest; AND SEEING, that the foresaid principal sum of 1000l. Sterling, with interest thereof from and since , are justly resting and unpaid; and that the said tutors of the said B, have agreed to supersede payment of the said principal sum to the term of Martinmas next to come, on my paying up the interest due thereon, and granting this present bond of corroboration: THEREFORE, I do hereby, in CORROBORATION of the ORIGINAL BOND above narrated, and without prejudice thereto, or to any diligence that has, or may follow thereon, *sed' accumulando jura juribus*, BIND and OBLIGE me, my heirs, executors and successors whatsoever,

whatsoever, renouncing the benefit of discussing my heirs, of whatever kind, in order or priority, to CONTENT and PAY to the said B, his heirs, executors or assignees, the foresaid principal sum of 1000l. Sterling (the interest thereof, prior to this date, being paid up by me), and that at, and against the term of Martinmas next; WITH 200l. Sterling of liquidate expenses in case of failure; TOGETHER ALSO, with the due and lawful interest of the said principal sum from this date, to the said term of payment, and termly and continually thereafter during the not payment thereof. AND I CONSENT to the REGISTRATION hereof, &c.

*Bond by an Heir, of a Bond and Assignment in Security, and of a Bill granted by the Predecessor, intended to supply the Place of a Decree of Constitution.*

I B, heir to the deceased A, CONSIDERING that the deceased A, by his bond, bearing date , bound and obliged him, his heirs, executors and successors, to pay to C, his heirs or assignees, (including his executors, not only from the said principal sum, but also from any annual rent or expenses that may be incurred in virtue of the said bond), the sum of 500l. Sterling, at the term of Martinmas then next; WITH 100l. Sterling of liquidate expenses in case of failure; TOGETHER

ALSO



ALSO with the interest of the said principal sum from the date of the said bond, to the foresaid term of payment, and yearly, termly, and continually thereafter, during the not payment of the same; and, for the said C's further security and more sure payment of the foresaid principal sum, interest, and liquidate expenses, the said A made, constituted and ordained the said C, and his fore-saids, his lawful and irrevocable cessioners and assignees, in, and to the sum of 800l. Sterling of principal, 160l. Sterling of liquidate penalty, and interest of the said principal sum, from and after  
, contained in, and due by a bond dated  
, granted by L to the said deceased A, his heirs and assignees, as the said bond and assignation, of date foresaid, bear; and that the said C, by his bill, bearing date the  
, drawn by him upon, and accepted by the said A, ordered him on the  
then next, to have paid to him, or his order, at his house  
, the sum of 20l. Sterling, value in money instantly advanced, as the said accepted bill bears: AND SEEING that the said principal sum of 500l. Sterling, and interest thereof, since  
, contained in, and due by the said bond, AND the said principal sum of 20l. Sterling, with interest from the said  
, contained in, and due by the said bill, are still resting and unpaid to the said C; AND THAT he is, willing to supersede the payment of the said sums to the terms aftermentioned, on my becoming  
ing

ing bound in manner underwritten : THEREFORE, IN CORROBORATION of the foresaid BOND and ASSIGNATION in SECURITY, AND of the bill above recited, themselves, and without prejudice thereto, or to any diligence done or to be done thereon, *sed accumulando jura juribus*, I hereby BIND and OBLIGE me, and my heirs, executors and successors whatsoever, to CONTENT and PAY to the said C, his heirs or assignees, (secluding his executors, as well from the principal sums above and after-mentioned themselves, as from any annualrents or expenses that have, or may hereafter become due thereon, in virtue of the foresaid securities, or of this present bond of corroboration thereof); NOT ONLY the foresaid principal sum of 500l. Sterling at the term of Martinmas next to come, with the sum of 100l. Sterling of liquidate expenses in case of failure; together with the due and ordinary interest of the said principal sum of 500l. Sterling, from and after the said , to the said term of payment, and thereafter, during the not payment of the same; BUT ALSO, the foresaid other principal sum of 20l. Sterling, at the said term of Whitsunday next to come, with 4l. Sterling of liquidate expenses in case of failure, and the legal interest of the said principal sum from the said to the said term of payment, and in time coming during the not payment thereof; DECLARING hereby, that although the said C is noways bound to do diligence on the  
said

said bond, the same having been assigned to him only in further security, in manner above expressed; yet, as he has now, at my desire, raised diligence thereon in his own name, so whatever part thereof shall actually be recovered and paid to him, the same, after deduction of the expense of recovery, shall be deducted from the sums, principal and interest, due in virtue of this present bond of corroboration: AND ALSO, it is hereby DECLARED, that on my making payment to the said C, or his forefairs, of the sums hereby due, he or they shall be obliged to transfer to me or to my forefairs, the said bond and sums therein contained, due by the said L, and assigned to him by A, in manner foresaid, with any diligence which shall have been done thereon. AND I CONSENT to the REGISTRATION, &c.

*Bond of Corroboration by the Heir of a Co-obligant  
in favour of an Assignee to Part of the original  
Debt.*

I A, CONSIDERING that A, B, C and D, by their bond, subscribed by them on the , granted them to have borrowed and received, as at the term of Lammas then last, from E, in name and behoof of F, the sum of 1000l. Sterling, which sum of 1000l. Sterling, with interest thereof from the said term of Lammas , to the term of payment underwritten, they bound

bound and obliged them, their heirs and successors whomsoever, to have contented and paid to the said F, his heirs and assignees (secluding executors), and that at and against the term of Whitsunday ; with the sum of 200l. Sterling of penalty in case of failure, together with the due and ordinary annualrent of the said principal sum, yearly, termly, and continually, as long as the same should happen to remain unpaid after the term of payment above specified, as the said bond, of date foresaid, registered in the books of Council and Session (office —), more fully bears, on which bond the said F raised letters of inhibition, which are dated and signeted , and caused execute the same against the debtors in the said bond on the , and publish the same against the lieges on the ; which inhibition, with its executions, were duly recorded in the general register of inhibitions at Edinburgh, the ; as the same also more fully bear : THAT the said F, by his factory, of date , granted full power, warrant and commission to the said E, to intromit with and uplift the said debt, to pursue and charge therefor, and discharges and assignations thereof to grant ; as in the said factory, recorded , more fully is expressed : THAT the said E, as factor foresaid, by assignation subscribed by him, of date , for the causes therein specified, MADE and CONSTITUTED G his irrevocable cessioner and assignee in and to the said principal .

principal sum of 1000l. Sterling, 200l. of penalty and annualrents of the said principal sum from and after the the term of Whitsunday , and yearly and termly in time coming, during the not payment thereof, AND IN and TO the said bond and diligences themselves, as the said assignation, duly registered , bears ; and which assignation was, on the , duly intimated, conformably to an instrument of intimation under the hands of , notary public ; IN and TO which bond, letters of inhibition, and assignation thereof, with the sums of money therein contained, H has now right, by general disposition in his favour, granted by the said G, bearing date ; whereby the said G assigned and dispoed to the said H, his heirs and assignees, the whole sums of money, principal, interest, and penalty, then owing to him, by whatever person or persons, or which should be due to him at the time of his death, by bonds, bills, or in any other manner of way, and likewise nominated him his sole-executor and intromitter with his goods, gear, debts, and sums of money ; which disposition is registered, &c. In virtue of which nomination, the said H was, on the , decerned executor-dative to the said G, by the commissary of

AND THAT the said H, by his disposition and assignation, bearing date , reciting the premises, and subsuming, that, by contract of marriage, of date , passed betwixt him and

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and

and his spouse ; and also that, by a destination subscribed by him, he judged it proper to declare, in his own lifetime, the share that each of the children of the marriage with the said  
was to have of the sums provided and secured to them by the said contract of marriage : Therefore, in implement of the said contract and destination, the said H thereby assigned and disposed to H, his only son of the said marriage, and to K, his eldest daughter of the said marriage, their heirs and assignees, the foresaid principal sum of 1000l. Sterling, in the shares and divisions following, viz. to the said H 700l. Sterling of the said principal sum, and to the said K the remaining 300l. Sterling thereof ; and the annualrents of the principal sum of 1000l. Sterling from and after Martinmas , to be divided betwixt them agreeably to their shares of the said principal sum, with the said sum of 200l. Sterling of liquidate penalty, to be divided betwixt them in the same proportions, together with the said principal bond, letters of inhibition following thereon, and executions and registrations of the same, assignation thereof above-written, and instruments of intimation thereof, with all that has or may follow hereon, as the said disposition and assignation at more length bears : AND FURTHER, CONSIDERING that the said H, son of the said H, intended and raised summons and action before the Lords of Council and Session, at his instance, against B, C, and

and D and me, as representing the said A, my father, for payment jointly and severally to him, as having right, in manner foresaid, to the said sum of 700l. Sterling, and of the bygone interest thereof, with a proportional part of the said penalty of 200l. Sterling effeiring to the said 700l. Sterling, which summons is dated and signeted :

AND SEEING that the foresaid sum of 700l. Sterling, with interest thereof since Martinmas are yet due, (the bygone interest preceding that term being now paid up to the said H), and that the said H has agreed to supersede payment of the same to the term of Whitsunday , on my

becoming bound in manner underwritten : THEREFORE, I do hereby, in CORROBORATION of the original bond above narrated, and without prejudice thereto, or to the grounds of debt, diligence following thereon, and conveyances thereof, *sed accumulando jura juribus*, BIND and OBLIGE me, my heirs, executors and successors whomsoever, to CONTENT and PAY to the said H, only son to the said deceased H, by the said his spouse, and his heirs, executors or assignees, the preceding sum of 700l. Sterling of principal, and that at and against the said term of Whitsunday , with 140l. Sterling as a proportional part of the foresaid penalty of 200l. Sterling in case of failure, together also with the due and ordinary interest of the said principal sum of 700l. Sterling, from and since the said term of Martinmas ,

to the foresaid term of payment, and yearly, term-ly, and continually thereafter, during the not-payment thereof. AND I CONSENT to the REGISTRATION, &c.

These examples will have sufficiently explained the changes that take place on the bond for borrowed money ; and I shall next endeavour to give instances of this deed, where it is granted on other considerations, and with a different view.

4. OF CHANGES ARISING FROM OTHER CAUSES, AND WHERE THE OBLIGATIONS DIFFER FROM THOSE OF THE COMMON MONEY-BONDS.

IN the present class of deeds, the first to which I shall call the reader's attention, is the bond for the cash-account ; and for the form of the heritable security for a cash-account, I shall beg leave to refer to the Second Volume of this Collection ; first edition, p. 170 ; second edition, p. 190.

*Bond for a Cash-Account.*

We A and B, CONSIDERING that C D & Co., bankers in Edinburgh, have agreed to allow us

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credit



credit upon a cash account to be kept in their books, in name of me the said A, to the amount of 500l. Sterling, on our granting these presents ; **THEREFORE**, we the said A and B hereby **BIND** and **OBLIGE** ourselves, conjunctly and severally, and our heirs, executors and successors whomsoever, to **CONTENT** and **PAY** to the said **C D & Co.**, and their heirs, executors or assignees, or to the cashier of the said Company for the time being, for their behoof the aforesaid sum of 500l. Sterling, or such part or parts thereof as I the said A shall value for, or draw out, by orders or draughts on the said Company, or their cashier, in virtue of the foresaid credit (1.), over and above what of the proper cash of me the said A may happen to be lodged in the said cash account, and that at any time when the same shall be demanded after six months from the date hereof, with the legal interest thereof, from the time of the advance until the same is repaid, and a fifth part more of the said principal sum of penalty in case of failure, or proportionally effecting to the sum due : And it is hereby declared, that a stated account, made out from such orders or draughts as shall be drawn by me the said A upon the said Company, or their cashier (2.), and signed by their accountant, shall be sufficient to constitute and ascertain a balance and charge against us, whereof no suspension shall pass at our instance, except on consignment only. **AND WE CONSENT** to the **REGISTRATION** hereof  
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in the books of Council and Session, or other Judges' books competent, to have the strength of a decree interponed hereto, that letters of horning, on six days charge, and all other execution necessary, may pass thereon, in form as effects ; and for that purpose constitute

our procurators, &c.

In witness' whereof, &c.

### Observations.

1. WHERE the person, receiving the credit has occasion for letters of credit on foreign places, or where he is engaged in mercantile transactions, the following addition may be made to the bond of credit ; and at fig. 1. you will say,—‘ AND ALSO, such sum or sums of  
‘ money as the said C D & Co. shall stand  
‘ engaged for, on account of me the said A,  
‘ by accepted or discounted bills, letters of cre-  
‘ dit on foreign places, guarantees, or in any  
‘ other manner of way, not exceeding, in all,  
‘ the sum of 500l. Sterling. ’ And at figure 2. there will be the following addition: ‘ And  
‘ from the books of the said Company, in so  
‘ far as respects what they may otherwise stand  
‘ engaged

‘ engaged for, on account of me, the said A,  
‘ as above mentioned, and signed, ’ &c.

2. Where the credit is given by any of the public banks, the bond may have this narrative : ‘ CONSIDERING that the Court of Directors of the Governor and Company of the Bank of Scotland have agreed to allow a current credit upon a cash-account to be kept in the Company’s books, in the name of me the said A, to the amount of 500l. Sterling, in terms of the rules and conditions established by the said Court of Directors, and and recorded in their books ; whereof an extract is delivered to me, signed by the Secretary to the said Bank : THEREFORE, ’ &c.

3. When payment of the advances on this credit is to be enforced, an account is made out, fitted and balanced and signed by the Company ; the bond itself is put on record ; and, on these two, the recorded bond and signed account, a bill is presented to the Lord Ordinary on the bills, praying for a warrant for letters of horning against the obligants in the bond, which is granted in common form ; of which

which an example will be given, under personal diligence.

*Bond of Relief of a Bank Credit.*

I A, considering that B and I, by our bond of credit to C D & Co., bearing date , in consideration of their having agreed to allow us credit on a cash-account, to be kept in their books in my name, to the extent of 500l. Sterling, thereby BOUND and OBLIGED us, conjunctly and severally, and our heirs, executors, and successors whomsoever, to content and pay to the said C D & Co., and their heirs, executors or assignees, or to the cashier of the said Company for the time being, for their behoof, the foresaid sum of 500l. Sterling, or such part or parts thereof as I the said A should value for, or draw out, by orders or draughts on the said Company, or their cashier, in virtue of the foresaid credit, over and above what of the proper cash of me, the said A, may happen to be lodged on the said cash-account, and that at any time when the same may be demanded after six months from the date thereof, with the legal interest from the time of the advance, until the same should be repaid ; and a fifth part more of the said principal sum of penalty in case of failure, or proportionally effecting to the sum due : AND it is thereby DECLARED, that a stated account,

made out from such orders or draughts as shall be drawn by me the said A upon the said Company, or their cashier, and signed by their accountant, shall be sufficient to constitute and ascertain a balance and charge against us, whereof no suspension shall pass at our instance, except on consignation only: AND FURTHER, CONSIDERING that the foresaid credit of 500l. Sterling, given by the said Company, is for behoof of me the said A, and noways for behoof of the said B, who became engaged in the foresaid bond only at my desire; and it being reasonable that he and his foresaids should be relieved of the said engagement; THEREFORE I the said A do, by these presents, BIND and OBLIGE me, my heirs, executors and successors whomsoever, to warrant, free, and relieve the said B, and his heirs, executors, and successors whomsoever, from all payment of the said sum of 500l. Sterling, or any part or parts thereof, which I the said A shall happen to value for, or draw out, by my said orders or draughts, in virtue of the said bond of credit, and of the whole annualrents and liquidate expenses that may fall due, or be incurred by virtue of the bond of credit before recited, and of all damage, interest and expense, which he or his foresaids may happen to sustain or be put to, in any manner of way, through his becoming engaged for me as aforesaid; and that under the penalty of 100l. Sterling, which I oblige me and my foresaids to pay to the said B and his foresaids,

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in case of failure, over and above performance. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days charge, and all other execution necessary, may follow, on a decree to be interponed hereto, in common form ; and, for that purpose, CONSTITUTE

OUR PROCURATORS, &c. In witness whereof, &c.

*Observation:*

Where there are more than one cautioner, and where the bond of relief will be given for the benefit of the whole, the following clause may be inserted immediately before the clause of registration : ‘ AND I hereby DECLARE, ‘ That all manner of diligence shall be competent to pass hereon, in virtue of the clause of ‘ registration herein contained, either at the ‘ instance of the said whole persons, coobligants, jointly, or of any one of them separately, and their heirs respectively, for obliging me and my forefairs to implement this ‘ present bond of relief. AND I CONSENT, ‘ &c.

*Bonds of Annuity.*

THE bond of annuity is a common form, by which, provisions to widows or children are granted. But these properly belong to a different department ; and at present, I shall present such forms only of the deed as arise from onerous causes ; and, in a few examples, I hope to give all that will be necessary for explaining the onerous bond of annuity in favour of strangers.

The most material thing in this form of deed, is the endurance of the annuity. By expressing this carelessly, and making the annuity payable at Whitsunday and Martinmas, during the lifetime of the annuitant, the sum due to him at the time of his death may be that only which fell due at the term of Whitsunday or Martinmas preceding his death ; so that he may be deprived of all support, or his heirs of the means of repaying what may be due from that term to the period of his death. Of this, there is a strong instance, in the case of the Earl of Dalhousie against Gilmour, June 19. 1789, where the annuity is made payable ‘ at the  
‘ two

‘ two terms of Whitfunday and Martinmas, by  
 ‘ equal portions, beginning the first term’s pay-  
 ‘ ment at Whitfunday first, for the half year  
 ‘ preceding, and the next term’s payment at  
 ‘ Martinmas thereafter, for the half year pre-  
 ‘ ceding that term, and so to continue in the pay-  
 ‘ ment of the same, and every subsequent term  
 ‘ of Whitfunday and Martinmas, in all time  
 ‘ thereafter, during the natural life of the said  
 ‘ Thomas Glen. ’ Dr Glen died on the 2d  
 of November ; and the Court found, ‘ that  
 ‘ this annuity, similar to an obligation for pay-  
 ‘ ment of rents of land, being made payable  
 ‘ half yearly, at such of the terms of Whitfun-  
 ‘ day or Martinmas as might occur during the  
 ‘ annuitant’s life, the defender was not bound  
 ‘ to pay any part or portion of the said annui-  
 ‘ ty at or for any intermediate period between  
 ‘ those terms within which the annuitant died,  
 ‘ or at any term occurring after his decease. ’

This case will put the conveyancer on his  
 guard as to the manner of expressing the obli-  
 gation, where it is the intention of a creditor  
 to purchase a lifeferent annuity, which may en-  
 dure to the last day of his life ; while, at the  
 same time, it will show the propriety of dis-  
 tinguishing



tinguishing where the annuity is meant to come in place of an annuity out of lands; and, with this caution, I proceed to the forms of bonds of annuity, subjoining here the form of an heritable bond of annuity, which, I find, has been omitted under its proper head in the preceding volume.

*Bond of Annuity.*

I A, for certain onerous causes and considerations, BIND and OBLIGE me, my heirs, executors, and successors whomsoever, to make payment to B or his assignees, during all the days of his natural life, of an annuity, at the rate of 100l. Sterling yearly, and that by equal portions, beginning the first term's payment thereof at Whitfunday next, for the half year immediately preceding, and the next term's payment at Martinmas thereafter, and so forth termly during his lifetime, and also daily and continually from the last of these terms down to the day of the death of the said B, WITH a fifth part more of each of the said payments of liquidate penalty for each failure, and the due and ordinary interest of the said annuity, from the respective periods of payment thereof, during the not payment of the same. And I CONSENT to the registration hereof in the books of Council and Session, or other Judges' books

books competent, that letters of horning, on six days charge, and all other execution necessary, may pass, on a decree to be interponed hereto, in form as effeirs; and for that purpose CONSTITUTE

MY PROCURATORS, &c. In witness whereof, &c.

*Bond where the onerous Cause is expressed, and where the Benefit of Discussion is renounced.*

I A, for the sum of 45*l.* Sterling instantly advanced and paid to me by B, whereof I hereby acknowledge the receipt, DO, by these presents, BIND and OBLIGE me and my heirs, (renouncing the benefit of discussing them), TO CONTENT and PAY to the said B, or her assignees, during all the days of her life, an annuity at the rate of 5*l.* Sterling yearly, free of all deductions whatever, and that at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first term's payment of the said liferent annuity at the term of Whitfunday next, for the half year preceding, the next term thereof at Martinmas thereafter, and so forth termly for all the years and terms of her natural life, whether married or unmarried; and from the last of these terms, daily and continually, down to the day of her death; with a fifth part more of the said payments, of liquidate penalty, for each failure in payment of the said annuity. AND  
I

I CONSENT to the REGISTRATION hereof, &c. (*as in the preceding example.*)

*Bond of Annuity to a Minor, declaring the Discharges of the Mother to be sufficient during Minority, and containing an Obligation, that if, at the Death of the Annuitant, any Part of the Sum received shall remain unexhausted, it shall be paid to the Heirs of the Annuitant.*

I A, for the sum of 200l. Sterling advanced and paid to me on the \_\_\_\_\_, by B, *alias* C, my aunt, wife of C, (being her own proper money, not falling under her husband's *jus mariti*, and advanced with his approbation), by these presents, BIND and OBLIGE me, and my heirs of all kinds, and my executors and successors whatsoever, without any benefit of discussion, to content and pay to M C, only lawful daughter and child procreated of the marriage between the said B and C, an annuity of 20l. Sterling during all the days of her natural life ; and that at two terms in the year, Lammas and Candlemas, by equal portions, beginning the first term's payment thereof at the term of Lammas \_\_\_\_\_, and so forth, termly thereafter, during all the days of her lifetime, as said is ; with 2l. Sterling of liquidate penalty for each term's failure in punctual payment of the said annuity and annualrent, from and after the respective

spective terms of payment, during the not-payment : AND it is hereby DECLARED, that any receipts or discharges to be granted by the said B, *alias* C, for the said annuity to be paid to her daughter, shall be a valid exoneration of the said annuities to me, until the said M C shall attain the age of 21 years complete, during which period the annuities are to be paid to her mother, if she shall be in life, to be applied by her for her daughter's behoof, according to her own discretion : And in case the said B shall die before her daughter attains the foresaid age of 21 years complete, then, the said annuity, as it falls due, is to be paid by me to E and F, or to any one of them, and whose discharges shall be a sufficient exoneration to me ; and they are to apply the said annuity to the use and behoof of the said M C, according to their discretion : AND FURTHER, in case the said M C shall die before her mother, and before receiving as much of the said annuity as shall amount to the said 200l. Sterling, received by me as aforesaid, then, and in these joint events, as a testimony of my friendship and good will to my said aunt, I hereby oblige me and my forefaids to make up and pay back to her, at the first Candlemas or Lammass thereafter, as much as, with the annuities paid to or for her daughter, shall make up the said sum of 200l. Sterling. AND I CONSENT to the REGISTRATION hereof, &c. (*as in the first example.*)

*Bond*

*Bond of Annuity, where the Annuitant has renounced a Liferent Right to Lands, in consideration of the Bond of Annuity.*

I A, CONSIDERING that A, elder, of \_\_\_\_\_, my father, has, by a renunciation, of the date hereof, granted by him, renounced and discharged, in my favour, his liferent right of the lands of \_\_\_\_\_, which were reserved to him by the contract of marriage betwixt me and \_\_\_\_\_, my spouse, dated \_\_\_\_\_, and has assigned to me the rents and duties of the said lands, from and after Whitsunday last, and in time coming : THEREFORE I, by these presents, BIND and OBLIGE me, and my heirs and executors whatsoever, to CONTENT and PAY to the said A, my father, the sum of 100l. Sterling, in name of annuity, yearly and termly, at two terms in the year, Whitsunday and Martinmas, by equal portions, during all the days of his natural life ; \* beginning the first term's payment of the said annuity ten days after the date hereof, for the half year from Whitsunday

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\* It will be recollected here, that this annuity is intended to come in place of an annuity payable out of the rents of land to which a different rule would be applied, from what is applied to a liferent annuity purchased from the debtor ; and therefore, if it be the intention of parties that this annuity shall be payable down to the day of the annuitant's death, it will be necessary so to express it.

funday laſt to Martinmas next; and the next term's payment at Martinmas next, for the half year from that term to Whitfunday thereafter; and ſo forth at the terms of Whitfunday and Martinmas yearly, during my ſaid father's lifetime; with 10l. of penalty for each term's failure, and intereſt for each term of the ſaid annuity, as often as the ſame ſhall be incurred and fall due, during the not-payment thereof, after the reſpective terms of payment thereof. AND I CONSENT to the REGISTRATION, &c. (*in common form, as in the firſt example.*)

*Bond of Annuity, where the Renunciation of the Liferent Right is intended to enable the Fiar of the Estate to sell ; and, where the Annuity takes place, only in that Event, and not till then.*

THE deed will be the same as in the preceding example, with the addition of the following clause immediately before the clause of registration ; ‘ Declaring always, and it is hereby expressly PROVIDED and DECLARED, that  
‘ in case the said lands of                      and others,  
‘ over which the life rent right of the said A  
‘ extended, are not sold by me, according to  
‘ my present resolution ; THEN, and in that  
‘ case, he shall be allowed, in place of the said  
‘ annuity,

‘ annuity, to levy the rents and other casual-  
 ‘ ties of the said lands, and possess and enjoy  
 ‘ the same as he has done since the date of the  
 ‘ said contract of marriage, notwithstanding of  
 ‘ his having renounced the said life-tenanted lands  
 ‘ in my favour : It being the meaning and un-  
 ‘ derstanding of parties, that this present bond  
 ‘ of annuity shall take effect in favour of my  
 ‘ said father only from and after the actual sale  
 ‘ of the said lands, so that he may enjoy the  
 ‘ foresaid annuity in manner hereby provided,  
 • ‘ in lieu and place of his present life-tenanted right,  
 ‘ from the term that he is dispossessed thereof. ’

It will be proper also, in this as in the former case, to attend to the foot-note on the preceding page.

*Bond of Annuity by the Purchaser of an Estate to the Widow of the former Proprietor, who was invested therein for her Jointure. \**

I A, CONSIDERING that, by contract of marriage entered into betwixt B younger, now deceased, with consent of his father B, elder, on the one  
part,

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\* Here, also, it may be proper to attend to the remark in the foot-note of the preceding example, p. 126.

part, and C, with consent, &c. on the other part, the said B younger, with consent of his father, and the said B elder, with consent of his son, and they both, with one advice and consent, bound and obliged them, their heirs and successors whatsoever, renouncing the benefit of discussing their heirs, of whatsoever kind, in order and priority, to invest and lease the said C in life, during all the days of her lifetime, in an annuity of 150l. Sterling, free of all cesses, stents, taxations, feu, blench and teind-duties, minister's stipends and schoolmaster's fees, and other burdens, retentions or deductions whatsoever, yearly; to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions; and beginning the first uplifting thereof at the first Whitsunday or Martinmas after the decease of the said B younger, for the half year immediately preceding, FURTH OF ALL and WHOLE (*here the lands were described*), or furth of any part or portion thereof, readiest mails, profits and duties of the same; and that by double investments and two manners of holding, to be holden in manner therein mentioned; as the said contract of marriage, containing a clause of absolute warrandice of the said annuity, and a personal obligation on the said B to pay the same, and a precept of sasine, with several other provisions, at more length purports: THAT on the precept of sasine, contained in the said marriage-contract, the said C was duly invested and leased in the foresaid life annuity of



150l. Sterling, upliftable yearly out of the lands and others above written ; as an instrument of fine taken thereon in her favour, dated and registered , more fully bears : THAT under the said contract, and in virtue of her said investment, the said C did enter upon possession of her said annuity of 150l. Sterling, and has been in use to receive the same out of the said lands : AND FURTHER CONSIDERING, that the affairs of the said B elder, and the said B younger, having gone into disorder, and they having vested their whole lands and estate (of which the lands above described are a part) in the person of D, and in other persons as trustees, to be sold for behoof of their creditors, the said trustees did accordingly expose the said estate to public sale, by way of roup, when the same was purchased by me, as only offerer, agreeably to the articles of roup, and minutes of sale following thereon, of date ; by which articles, it is, amongst other things, provided, that the purchaser should enter to the possession of the said estate at Whitsunday , on giving security for the price in manner therein mentioned ; and that the purchaser should be obliged to grant personal security to the said C, for payment to her of the said annuity at two terms in the year, Martinmas and Whitsunday, by equal portions, beginning the first payment thereof at Martinmas , and so termly thereafter, during the life of the said C ; on which account,

3000l.

3000l. Sterling of the price of the estate is thereby provided and allowed to remain in the purchaser's hands, without interest, during the life of the said C, for the purchaser's relief, who is to pay the capital, or so much thereof as shall remain unexhausted through the falling of the legal interest, at the first term after her death: THEREFORE, in implement of the foresaid provision contained in the said articles conceived in favour of the said C, for the better security and more sure payment of her said annuity, and in corroboration of her indentment above recited, and without hurt or prejudice thereto in any sort, I, as purchaser of the said lands and estate, (as I have already paid up to the said C, 75l. Sterling, being the term's annuity which fell due to her at Martinmas last, conformably to her receipt to me), do hereby BIND and OBLIGE me, my heirs, executors and successors whatsoever, to make payment to the said C of the foresaid annuity of 150l. Sterling, yearly and termly, at two terms in the year, Whitsunday and Martinmas, by equal portions, during her natural life; beginning the first term's payment thereof at Whitsunday next in this current year, and so forth termly thereafter, during her natural life, as said is, with 15l. Sterling of liquidate expenses for each term's failzie, *toties quoties*; WITH this PROVISION ALWAYS, that in case the legal interest of money shall fall below five per cent., whereby the annualrent of the foresaid retained sum of 3000l.

Sterling shall not be sufficient for answering the said annuity ; then, and in that event, neither my granting of these presents, nor my payment of the foresaid full annuity, in consequence hereof, to the said C during her life, shall hinder me from repairing the loss I may sustain, by retaining the same out of the said capital sum of 3000l. Sterling ; and that at the death of the said C, when the same will fall due and be payable to the creditors of the said Bs elder and younger, or to the trustees for their behoof, in terms of the bond, of this date, granted by me for the price of the said lands and estate. \* AND I CONSENT to the REGISTRATION, &c. (*in common form.*)

*Bond of Annuity by a Son to his Father, who had resigned a Professorship in the Son's favour, with an Assignment to the Salary in security of the Annuity.*

I A, eldest son of A, late professor of \_\_\_\_\_, in the university of \_\_\_\_\_, CONSIDERING that the said A, my father, out of paternal regard and affection for me, and for my better support and maintenance in the world, in case I shall happen to survive him, DID DEMIT and RESIGN his office of professor of \_\_\_\_\_, in the said university,

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\* See this form of the bond, p. 66.

university, in order that a new commission might be obtained, by his Majesty's gracious favour, to me in his place ; and, upon which resignation, I have obtained his Majesty's commission, bearing date at St James's ; AND it being reasonable that my said father, for the better support of me and the rest of his family, should enjoy, and have regularly paid to him, during all the days of his life, the established salary of 100l. Sterling per annum, annexed to the said office, for which I am bound, both in duty and gratitude, to give my father all the security in my power : THEREFORE, I NOT ONLY BIND and OBLIGE me, my heirs, executors and successors whatsoever, to CONTENT and PAY to the said A, my father, his heirs or assignees, the sum of 100l. Sterling, and that yearly, during all the days of his and my joint lifetimes, at four terms or times in the year, by four equal payments of 25l. Sterling each, viz. on the 21st August, 21st November, 21st February, and 21st May ; beginning the first payment of 25l. Sterling on the 21st August next, for the three months immediately preceding, and so forth thereafter during all the days of the joint lifetimes of my said father and me, with a fifth part more of liquidate expenses for each term's failure ; BUT ALSO, for the said A, my father, his further security and more sure payment of the foresaid sum, in the terms and man-

ner before mentioned, I, by these presents, MAKE, CONSTITUTE and ORDAIN the said A, and his forefaids, during all the days of his and my joint lifetimes, my irrevocable cessioners and assignees, IN and TO the sum of 100l. Sterling yearly, as the established salary annexed to the said office of professor of                    in the university of                    , payable out of the fund, &c. and now granted to me by his Majesty's commission before mentioned; AND IN and TO the said commission itself, so far as it respects the said annual salary, and all action and execution competent thereon, for payment thereof, with power to the said A, and his forefaids, to uplift and receive the fore-said salary, quarterly, as the same falls due, from                    ; and, if necessary, to charge, and pursue therefor, decrees for the same to obtain, and to cause put the same to all due and lawful execution; and, on payment, receipts and discharges to grant, which shall be sufficient to the receivers; and generally to do every other thing requisite and necessary for recovering payment of the said salary, which I could do myself: WHICH ASSIGNATION I BIND and OBLIGE me to WARRANT from all facts and deeds, done, or to be done, by me, prejudicial hereto. AND I CONSENT to the REGISTRATION, &c.

*Observ.*

*Observation.*

Before leaving this subject of liferent annuities, I may observe, that it may often be proper to fix on whom the burden of producing evidence of the existence of the liferenter ought to lye; and, with that view, the following clause may be introduced—‘AND DECLARING  
‘ ALWAYS, that in case of the said liferenter’s  
‘ absence from this country, or in the event  
‘ of his having assigned his right herein to another, that it shall, in both, or either of these  
‘ cases, be incumbent on those claiming the  
‘ said annuity, to condescend on the place of  
‘ the liferenter’s residence at the time, and to  
‘ produce evidence of his being then alive,  
‘ whenever the person or persons claiming  
‘ shall be so required by me, or my forefairs,  
‘ liable in payment of the said annuity; and  
‘ that before he, or they, can be entitled to  
‘ demand payment of the same.’

*Heritable Bond of Annuity.*

I A, in consideration of the sum of 1000l.  
Sterling instantly paid to me by B; as the full  
and adequate price of the liferent annuity hereby  
I 4 constituted,

constituted, of which sum of 1000*l.* Sterling I hereby acknowledge the receipt, renouncing all objections in the contrary, Do hereby BIND and OBLIGE myself, my heirs, executors and successors whomsoever, to CONTENT and PAY to the said B, or his assignees, a life-rent annuity, at the rate of 100*l.* Sterling yearly, during all the days of his natural life, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, and beginning the first term's payment at the term of Martinmas next for what shall be then due, and the next term's payment at the term of Whitsunday thereafter for the half year immediately preceding, and so forth termly during the lifetime of the said B, and from the last of these terms, daily and continually, down to the day of his death; TOGETHER ALSO with one fifth part more of each of the said payments, of liquidated penalty, in case of failure: And for the said B, and his forefairs, their further security and more certain payment of the said life-rent annuity of 100*l.* Sterling, and termly penalties above written, I BIND and OBLIGE me and my forefairs, on our own expense, to arrest and seize the said B and his forefairs, and that during all the days of his lifetime, NOT ONLY in ALL and WHOLE the said life-rent annuity, at the rate of 100*l.* Sterling yearly, to be uplifted and taken at the terms foresaid, termly and continually, during the natural life of the said B, FURTHER of ALL and

WHOLE

WHOLE (*here describe the lands as in the title deeds*); BUT ALSO, for the said B and his forefaids their further security and more sure payment of the said liferent annuity, and termly penalties above expressed, in ALL and WHOLE the said lands and others themselves, AND THAT by two several infeftments and distinct manners of holding, in manner following, viz. the foresaid liferent annuity to be held either of me, my heirs and successors, or from us of our immediate lawful superiors of the same, both in free blench farm, for the yearly payment of a penny Scotch upon the ground of the foresaid lands, at the term of Whitsunday, if asked only; AND the said lands and others foresaid, themselves, to be held either of me and my forefaids in free blench, for the yearly payment of a penny Scotch upon the ground thereof, at the term of Whitsunday, if asked only; OR from us, of our immediate lawful superiors of the same, in the same manner, and as freely in all respects as I hold, or may hold the same myself, and that either by resignation or confirmation, or both, the one without prejudice to the other: AND for completing the said infeftment by resignation, I hereby BIND and OBLIGE me, and my forefaids, to grant all necessary deeds, with procuratories of resignation and precepts of seisin, when required: AND I further BIND and OBLIGE me, and my forefaids, to warrant the foresaid liferent annuity, and the said lands  
and



and others, with the infeftments to follow hereupon, to be free, safe and fure to the faid B and his forefaids, at all hands, and againft all deadly, as law will: FURTHER, I BIND and OBLIGE me and my forefaids, not to lye out unentered in the forefaid lands, but to obtain ourfelves duly entered and infeft therein: FURTHER, I hereby MAKE and CONSTITUTE the faid B, and his forefaids, my ceffioners and affignees IN and TO the rents, mails and duties of the faid lands, from and after the            day of            next to come, and in all time coming, as will completely fatisfy and pay the faid liferent annuity as the fame falls due, and liquidated penalties forefaid; as alfo, in and to the leafes of the faid lands, and all diligence and execution competent to me thereupon; SURROGATING and SUBSTITUTING the faid B, and his forefaids, in my full right and place of the premifes during the whole period of his natural life; WITH POWER to him, and his forefaids, to enter into poffeffion of the faid lands and rents at their pleafure; DECLARING, that in cafe the faid B, or his forefaids, fhall at any time enter into the poffeffion of the faid lands, or fhall, in virtue of the powers hereby given, uplift the rents of the faid fubjects, or any part thereof, they fhall be liable for their actual intromiffions only, as the fame fhall be inftructed by their writ or oath, deducting always therefrom the expenfe they may incur in recovering the faid rents, or  
in

in factor-fee, or otherways, with all repairs, public burdens, and others, or in acquiring or maintaining the possession of the said subjects, in virtue hereof; and that they shall in noways be liable for not doing diligence, nor for insolvency of tenants, nor for omissions of any kind; and that they may relinquish and reassume the said possession at pleasure. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days charge, and all other execution necessary may follow on a decree to be interponed hereto, in common form; and for that purpose CONSTITUTE

my procurators, &c. And further, I DESIRE and REQUIRE you

and each of you, jointly and severally, my bailies in that part, to the effect after expressed, specially constituted, THAT, on sight hereof, ye pass to the ground of the said lands and others, and there give and deliver to the said B, and his foresaids, liferent state and seisin, real, actual and corporal possession, NOT ONLY of the foresaid liferent annuity, at the rate of 100l. Sterling yearly, during all the days of the said B's natural life, to be uplifted and taken at the terms and periods foresaid, furth of all and whole the said lands and others, or furth of any part thereof, and of the first and readiest of the rents, mails and duties of the same; BUT ALSO,  
of

of the said lands and others themselves, in REAL SECURITY to the said B, and his foresaids, of the foresaid. life-rent annuity, and liquidated penalties above mentioned; AND THAT, by delivery to the said B, and his foresaids, or to his or their certain attorneys, in his or their names, bearers hereof, of earth and stone of the ground of the said lands, and a penny money for the said life-rent annuity, and also of earth and stone for the said lands, and others foresaid, themselves, and all other symbols requisite and necessary; DECLARING ALWAYS, that the investment of life-rent annuity, and the investment of property in security, shall not be inconsistent, and may be used jointly or separately. AND this in no ways ye leave undone; WHICH TO DO, I commit to you, jointly and severally, full power, by this my precept of feisin, directed to you for that effect. IN WITNESS WHEREOF, &c.

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#### BONDS AD FACTA PRÆSTANDA.

Under this title, many of our bonds would naturally be arranged, as, for instance, bonds of presentation to a messenger, bonds to produce a party in Court, bonds of warrandice, even bonds of relief, are of this nature. But,  
in

in the arrangement I have chosen, these forms find, I should apprehend, a fitter place in the order of the respective transactions to which they belong; and, therefore, I shall content myself, here, with one or two forms of this kind, of a more insulated nature, which will sufficiently answer for giving a view of what is peculiar in bonds *ad facta præstanda*.

*Bond by a Factor obliging his Constituent to denude of certain heritable Securities to the Extent of Payments received by the Factor.*

I B, factor for, and in name of A, in virtue of a factory in my favour, dated \_\_\_\_\_, and registered \_\_\_\_\_, GRANT me to have instantly RECEIVED from C, purchaser of the estate of \_\_\_\_\_, the sum of 2500l. Sterling, in part payment of the debts resting to the said A, my constituent, by D, on heritable bonds granted by him to my said constituent over the said lands and estate of \_\_\_\_\_; AND THEREFORE, I BIND and OBLIGE me, and my said constituent, on our own expense, betwixt and Martinmas next, to renounce or convey to the said C, and his heirs, a part of the said heritable debts so secured on the said estate of \_\_\_\_\_, equivalent to the said sum of 2500l. Sterling, and interest

terest thereof, from this date, in a habile and effectual manner, AND THAT under the penalty of 500l. Sterling, to be paid by me to the said C, in case of failure, over and above performance. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or in any other Judges' books competent, that letters of horning on six days charge, and all other necessary execution, may pass on a decree to be interponed hereto, in form as effects; and thereto I CONSTITUTE

MY

PROCURATORS, &c. In witness whereof, &c.

*Bond by a Seller and Cautioner to the Purchaser, obliging them to relieve him of sundry Arrestments of the Price, the Purchaser having granted Bond for the amount of the Sums arrested.*

WE, A and B, CONSIDERING that, by a minute of sale, entered into betwixt me, the said A, and and C, dated , I, in consideration of the price therein mentioned, obliged myself to sell to the said C the lands of ; while he, on the other hand, became bound to pay to me twenty years' purchase of the free rent of the said lands, as the agreed price thereof, at the terms following (*here the terms of payment were stated*): THAT, since entering into the said minute, several arrestments of the price have been used by my creditors,

creditors, in the hands of the said C, viz. (*here the different arrestments were stated*): AND FURTHER CONSIDERING, that I the said A have, of this date, in implement of my part of the said minute of sale, granted a disposition to the said C, of the foresaid lands of                      , he has, of this date, paid up to me the full price of the said lands, the sum of                      l. Sterling excepted, for which he has granted bond, payable to me the said A, and which sum I am to apply in payment of the said arrestments; AND it being communed on, that we the said A and B should relieve the said C of the foresaid arrestments in manner underwritten: THEREFORE, we do hereby BIND and OBLIGE ourselves, jointly and severally, and our heirs, executors and successors, to FREE and RELIEVE the said C, and his heirs and successors, of the effect of the said whole arrestments, and from all damage, interest and expenses, which he may any ways sustain or incur therethrough, and of any process of forthcoming which may be intended against him, at the instance of any of the persons above named, creditors to me the said A, in consequence of the said arrestments, and of all pains or penalties he may incur, through the breach of the foresaid arrestments; AND, for that effect, at and against the said term of Martinmas next, upon his payment to me, the said A, of the foresaid sum of                      l., and interest thereof, as contained in his said bond, TO REPORT to him proper dis-  
charges

charges of the several debts for which the said several arrestments have been used, AND THAT under the penalty of      l. Sterling, over and above performance : AND FURTHER, we hereby BIND and OBLIGE ourselves, jointly and severally, and our forefaids, to REPORT to the said C, at and against the term of Martinmas next, a proper discharge by F, my tenant, to me, the said A, of the sum of 100l. Sterling of principal, and the interest due thereon, contained in a bill granted by me to the said F, dated      , and that under the penalty of 20l. Sterling, over and above performance : AND it is hereby DECLARED, that this present obligation shall afford action to each of the said creditors arresters, in the same way and manner as if the same had been directly granted in favour of each creditor. AND WE CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days' charge, and all other execution necessary, may pass on a decree to be interponed hereto, in common form ; and, for that purpose, WE CONSTITUTE

OUR PROCURATORS,

&c. In witness whereof, &c.

*Bond*

*Bond to the Commissioners and Trustees for Fisheries, &c. in Scotland, in consequence of their having contributed to erect a Lint Mill.*

WE A; B and C, CONSIDERING that the Commissioners and Trustees for fisheries, manufactures, and improvements in Scotland, have bestowed 100l. Sterling towards defraying part of the expense of fitting up a lint mill at \_\_\_\_\_, with a view to promote flax raising in that part of the country; and that sum being accordingly paid to us B and C, to be applied to that purpose; and it being agreed that we should grant the following obligation: THEREFORE we, the said B and C, and A, proprietor of the said mill and lands, BIND and OBLIGE us, our heirs and successors, jointly and severally, to D, secretary to the said commissioners and trustees, and to his successors in office, as secretaries aforesaid, for the use and behoof of the public, THAT, for the space of twelve years from the date hereof, the business of breaking and swingling flax shall be diligently carried on, and to a sufficient extent, at the said lint mill; THAT the whole art and skill of flax-dressing, carried on there within the said period, shall be communicated to the said trustees when required, and to any person or persons they shall direct, in full confidence that the trustees will give such reward, for any new improvement, that may be



of use for carrying on the business to more advantage, or for lowering the price of flax-dressing, as they shall think the improvement deserves, and their funds will admit; THAT an exact and faithful account shall be kept, with vouchers of all the money laid out, and to be laid out, within the foresaid period, in fitting up the said lint mill, with the other works connected, or to be connected therewith, for the business of flax-dressing, exclusive of repairs; THAT whenever the same shall be let in lease within the said period, no more shall be exacted therefor, than a rent equal to 7 per cent. of the expense of fitting up the mill and other works thereto belonging, exclusive of repairs, and also exclusive of the said 100l. Sterling, which has been advanced by the said trustees; AND THAT whenever the said lint mill shall be sold, if within the foresaid period, no more shall be exacted for the price than 22 years purchase, at the said rent; AND if the said trustees shall not be entirely satisfied that the foresaid conditions are truly and faithfully IMPLEMENTED, WE BECOME OBLIGED, as aforesaid, to REPAY the said sum of 100l. Sterling, without interest, or such part or parts of the said principal sum, as the said secretary, in name of the trustees, shall require within the said period, together with 10l. Sterling of penalty in case of failure. AND, LASTLY, WE SUBMIT and REFER the determination of all questions and debates that may arise with

with respect to our implementing these presents, or in consequence thereof in any manner of way; to the said trustees, or to their quorum, whose decisions shall be final. AND we CONSENT to the REGISTRATION hereof, and of the decree arbitral to be pronounced hereon by the arbiters above named, in the books of Council and Session, or other Judges' books competent, that letters of horning, on fix days' charge, and all other execution necessary, may pass on a decree to be interponed hereto, in common form; and, for that purpose, CONSTITUTE

OUR PROCURATORS, &c.

In witness whereof, &c.

*Bond to give up a Right of Servitude when required.*

I A, CONSIDERING that I lately built a mill upon the lands of \_\_\_\_\_, and that, for supplying it with water, I applied to B, for liberty to open an aqueduct from the river of \_\_\_\_\_, from that place called \_\_\_\_\_, where the said B has a salmon fishing; AND he having, out of his own free will, and from friendship to me, granted the said tolerance and liberty, to subsist during his pleasure, on my granting the following declaration and obligation in his favour: THEREFORE, I do hereby DECLARE that the foresaid tolerance

and liberty of opening an aqueduct from the said water of , to my said mill, is an indulgence granted to me by the said B ; AND THAT it shall be lawful to him, his heirs and successors, at their pleasure, to revoke the said allowance, and to shut up the said aqueduct, and that as well without as within the years of prescription : AND FURTHER, I BIND and OBLIGE me, and my heirs and successors, whenever we shall be so required by the said B, under form of instrument, TO SHUT UP, on our own expense, the said aqueduct, leading from the said river to my said mill ; AND, in case of failure, to make payment to the said B, and his forefathers, of 20s. for each day that the said aqueduct shall remain open, after the date of the said requisition, and that over and above performance. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, to have the strength of a decree thereof interposed hereto, that letters of horning, on six days' charge, and all other execution necessary, may be directed hereon in form as effects ; AS ALSO, that these presents may be registered in the general or particular register of sasines, therein to remain for preservation ; and, for that purpose, I CONSTITUTE

MY PROCURATORS, &c. In witness whereof, &c.

Sect.

Sect. 2. OF PERSONAL OBLIGATION ARISING FROM BILLS, &c.

It may be necessary, in a book of forms, to add something on the form of bills, and on the manner of their negotiation. I shall do so, slightly; after observing, that as inland bills have been put on the same footing with foreign bills, and latterly promissory notes, what I have to state, in regard to their constitution or negotiation, applies equally to all of these vehicles of commerce.

I shall give a few examples of the different forms, from the writers on the law of bills; as, from Chitty's treatise, or Glen's.

*Bill of Exchange.*

London, Jan. 1. 1798.

Exchange for 10,000  
livres Tournoises.

At two ufances, pay this my first bill of exchange (second and third of the same tenor and date not paid) to Messrs B & Co., ten thousand livres Tournoises, value received of them, and place the same to account.

A & Co.

To C & Co. in Paris, payable at —

K 3

Exchange

Exchange for 500l. Sterling.

Glasgow, 6. Feb. 1806.

At usance, pay this our first of exchange (second of the same tenor and date not paid) to order of Messrs Hamilton Smith & Co., the sum of 500l. Sterling, at the exchange as per indorsement; value in account, as advised by

DALRYMPLE & ELLIS,

To Messrs Denovan & Spadin,  
merchants in Hamburgh.

Payable at ———

*Inland Bills.*

£. 130 Sterling,     Edinburgh, 6. May, 1807.

Three months after date, pay to me, or to my order, at my shop here, the sum of one hundred and thirty pounds Sterling, for value received.

WM. DREW.

To Mr Alex. Campbell,

merchant in Leith.     ALEX. CAMPBELL.

£. 175 Sterling.     Glasgow, 5. June, 1806.

Conjunctly and severally, at the term of Martinmas first to come, pay to me, or to my order, at the Ship Bank here, the sum of one hundred

dred and seventy-five pounds Sterling, for value received.

ROBERT THOMSON.

To Messrs James Hamilton,  
merchant in Glasgow, and  
John Frazer, farmer at  
Westburn.

JAMES HAMILTON,  
JOHN FRASER.

L. 57 Sterling. Greenock, 6. May, 1807.

At sight, pay to William Gros esq., or  
order, fifty-seven pounds Sterling, which place to  
my account, without further advice.

HENRY GORDON.

To Mr Nicholas Brown,  
merchant, Aberdeen.

*Premissory Note.*

L. 100 Sterling. Glasgow, 7. April, 1807.

Three months after date, I promise to  
pay Mr William Middleton, or order, at his  
counting house here, the sum of one hundred  
pounds Sterling, value received.

WM. JOHNSTON.

Such being the forms of these vehicles of  
commerce, I shall add a few words on their  
K 4 constitution,

constitution, applicable, in some degree, to all of them ; and this I shall divide into the following heads : 1. Of the parties to the bill ; 2. Of the cause of granting ; 3. Of the date ; 4. Of the term of payment ; 5. Of the place of payment ; 6. Of the claims of interest and penalty, &c. ; and, lastly, of the stamps.

#### 1. *Of the Parties to the Bill.*

Those only who are capable of consent, can bind themselves : hence, idiots, or fatuous persons, or those under pupillarity, cannot become legally bound, nor consequently be parties, in a bill. Minors past pupillarity, cannot, in the common case, accept a bill ; because the personal obligation of a minor is effectual, only where the money has been employed profitably for himself,—a condition inconsistent with the nature of a bill. But where a minor has entered into trade, a bill accepted by him in the course of that trade, is effectual ; because, otherwise, he could deal only with ready money, which would, in effect, be saying that a minor could not enter into business :

July

July 24. 1752, Grieve v. Tait ; July 5. 1732, Craig v. Grant.

A married woman cannot bind herself personally, (Ersk. b. 1. tit. 6. § 26.) ; even where she has a separate estate, she cannot affect it, by accepting a bill that may be the ground of diligence ; she can affect it only by assignation, (Fawell v. Cheffels's trustees, Bell's Cases.) But here, from the same motive that regulates the case of a minor engaged in trade, a married woman engaged in trade may not only bind herself, but, where her husband is out of the country, she will be liable to diligence for enforcing payment ; Churnside v. Currie, July 11. 1789.

2. *Of the Cause of granting the Bill.*

Money is alone the fit subject of bills : the sum is put in figures at the top of the bill, and in writing in the body of the bill ; and where the sums differ, it is the sum in the body of the bill that regulates the value of the bill. But, although the bill be given for money, still there may be grounds arising from the nature of the transaction, that will annul the bill.

Thus,



Thus, the bill may have been given for money lost at play ;—the sum in the bill may be composed of usurious exactions ;—it may be the consideration of a smuggling concern ;—or it may be intended to constitute a legacy, or cover a donation. These it is necessary to consider.

*Game debt.*—A game debt is not actionable, Nov. 7. 1740, Pringle v. Biggar ; nor does it make any difference that it has arisen from a wager, Bruce v. Ross, January 26. 1787 ; nor will it be sanctioned, although the wager has been taken on a horse-race, or on a feat of horsemanship, Maxwell v. Blair, July 14. 1774 ; Woodsworth v. Pettigrew, May 15. 1799. A bill, therefore, for a game debt, or a wager, would not be effectual, even where it had been given for liquor which was lost at play ; Mac-Coull v. Braidwood, March 5. 1767. There are decisions, where it has been found, that this objection would not be good against such a bill in the hands of an onerous indorsee ; Kilkeran, Bill of Exchange, No. 4. Neilson v. Bruce, January 25. 1740 ; Stewart v. Hyflop, February 18, 1741, Clerk Home.—But the Court  
have

have latterly come to a different opinion (Morrison's Dict. p. 1509.)

*Usurious bill.*—Usury will render a bill void ; and, where accumulations of interest were inserted in a bill, it was held to be a bad bill ; *Dun v. Colquhoun*, February 12, 1790.

*Bill as the Price of smuggled Goods.*—A debt arising from a smuggling transaction is not entitled to the benefit of the laws it meant to infringe ; *Duncan v. Thomson*, 1776, Dict. vol. 4. p. 32.—A Scotchman residing abroad, who engages in this line of trade, is not allowed an action ; *Cantly v. Robertson*, February 11, 1790 ; *Cullen & Co. v. Philip*, May 15. 1793.—In this last case, no distinction was made betwixt a Scotchman and a foreigner ; and, to both, action was refused, if they had been accessory to the smuggle ; *Reid and Parkinson v. M'Donald and Elder*, May 15. 1793 ;—and even where the price of the smuggled goods had been heritably secured, by substituting an heritable bond for the bills, the whole were reduced (*Bell's Decisions*, p. 349.)

*Bill as a Legacy.*—A bill given as a *donatio mortis*

*mortis causa*, has never been sustained ; Fulton and Clerk v. Blair, November 9. 1722 ; Huttons v. Hutton, February 13, 1724 ; Wright v. Wrights, February 11. 1761 ; Dowie v. Millie, February 2. 1786.

But there seems to be no objection to a bill given on deathbed, the value of which was, bills given to those to whom the person on deathbed meant to give donations *mortis causa*; Adam v. Johnston, December 2. 1782.

And the objection, founded on its being a *donatio mortis causa*, is not competent against an onerous indorsee ; November 24, 1761, Shaw v. Farquhar.

*Donation by a Bill.*—A bill is not the proper form of a donation ; Weir v. Parkhall, November 25. 1736 ; Kilkerran, Bill of Exchange ; and Clerk Home.—The question, Provan v. Calder, July 23. 1742, Remark. Decis. No. 30, does not seem to run counter to the former ; as, in this last case, much of the argument turned on the point, whether the bill was *præmium pudicitiae*.

But although a donation cannot be given by a bill, it may be given by the delivery of a bill  
blank

blank indorsed, the act of delivery being legally proved : Barbour and Blackwood v. Hair, February 8. 1753.—And, last of all, it was found, that although a donation cannot be made directly, by giving a bill to the donee, it may be made by an indorsation, or by an order on a bank ; Disponees of Steel v. Wemyss, December 18. 1793.

It seems to be no objection to a bill, that the sum is ordered to be paid from a particular fund ; M'Gibbon v. the Managers of the Woollen Manufactory at Newmills, July 14, 1710.—Nor is it an objection, that the bill bears the amount to have been the balance of accounts betwixt the parties, Trotter v. Shiell, February 21. 1738 ;—neither is it an objection, that the bill bears the sum drawn for to be the price of a certain crop ; Wilson v. Smith, December 6. 1722 ; Dict. vol. 1. p. 95.

And, last of all, it is not held to be a gratuitous bill, where two parties have mutually granted bills, to be deposited with an arbiter, in order to enable him to give an effectual warrant for payment of a balance due by the one party to the other ; Clerk v. Ker, February 19. 1751.

### 3. *Of the Date of the Bill.*

Mr Erskine (B. 9. tit. 2. § 26.) considers the want of a date as fatal to a bill.—The vitiation of the bill, as, for instance, by converting the 7. June to the 17. June, has been found to be fatal to a bill; Murchie v. M'Farlane, July 1796. But the correction of an error fairly made at the time of drawing out the bill, as by turning 1780, which had been put down by mistake, into 1800, was not fatal to the bill; Henderson v. Hay, February 20. 1802.

### 4. *Of the Time of Payment.*

A bill is made payable on demand, or at sight; or at so many days after sight; or so many days, weeks, or months, after date; or against a term, or a precise day.—Where it is made payable on demand, it is said to have no days of grace;—where, again, it is payable at sight, in England the days of grace are given: but there are no cases, here, where the point has been ascertained. In all other cases, three days of grace are given; and this is a period, not at  
1 the

the option of the creditor, but which forms as much a part of the period of the bill, and to which the debtor is as much entitled, as to any other part of the period. Where, however, the third day of grace falls on a Sunday, two days of grace only are given ; and the bill must be paid, or protested, on the Saturday preceding.—Where a bill is payable one or more months after date, it is the calendar, and not the lunar months, by which the period of the bill is estimated.—Where it is dated the first of a month, and is payable one month after date, it falls due the 1st-4th of the next month ; where it is dated the last day of the month, it falls due the last of the ensuing month, if it has not more days than the former. Thus, if it be dated January 30th, or 31st, and be made payable one month after date, it will be due the last day of February ; and so payable the 2d March. But, if it be dated February 29th, it will be due the 29th March, and not the 31st of that month.—Where the term of payment is so many days after date, or at so many days sight, the day of the date of the bill, or the day on which it is accepted, does not enter into computation. Thus, a bill, dated January 1st, payable at forty days date, is due February 10th-13th.—Where,

Where, again, the bill is payable at so many weeks after date, they are reduced into days, and the day of payment calculated accordingly.

The term of payment cannot be made at a distant day, nor at a term which may not arrive for a long course of years ; as, for instance, at Whitsunday or Martinmas after the death of the acceptor ; *MacArthur Stewart v. Fullarton and others*, January 29th, 1782. Whether the term of payment may not be separated ; or, rather, whether the sum in the bill may not be made payable at different periods, does not seem to have been precisely fixed by the decisions of the Court. Thus, a bill for ten shillings a day, until the creditor received a commission, was not good ; *Lord Garnock v. Duke of Queensberry*, Feb. 1721, Rem. Dec., No. 25. And where a promissory note, payable by instalments, came to be judged of by the Court, they avoided the general question, by turning the decree into a libel ; *Carron Company v. Muirhead*, February 25. 1796.

5. *Of the Place of Payment.*

The place of payment ought to be specified in the bill ; but, the want of that, does not invalidate the bill.—It ought, where no place of payment is specified, to be protested in the presence of the person drawn upon ; or, if he cannot be found, at his dwelling-place.

6. *Of Clauses relative to Interest, &c.*

A clause of interest in a bill, is not fatal to it, according to modern opinion ; though the decisions of the Court have varied a good deal on this point. Thus, in the case, *Henderson v. Sinclair*, 1727, Rem. Dec. No. 99, a bill bearing interest from its date was sustained. In *Dinwoodie v. Johnston*, June 28. 1737, and *Gillespie v. Orr*, Dec. 13. 1738, the same decision was pronounced. A different opinion was entertained by the Court, *M'Niell v. Campbell*, Jan. 24. 1741, Clerk Home, No. 162. ; and *Paterfon v. Finlays*, Feb. 25. 1741, Kilkerran, Bill of Exchange, No. 5. ; *Drummond v. Graham*, Dec. 9. 1743. The Court, in the



following cases, returned to their first opinion, and found the bill good ; *Lauder v. Murray*, June 10. 1744 ; *Executors of Stewart v. the King's Advocate*, Nov. 2. 1750. They again altered this opinion, and found that such a bill was bad ; *Lockhart v. Mirrie*, Dec. 11. 1750 ; *Moncrieff v. Moncrieff*, July 30. 1751 ; *Douglas and Lindsay v. Brown*, Nov. 15. 1757. At last, the Court came to sustain the bill, though carrying interest from its date ; first, in the case of *M'Lauchlan*, Jan. 2. 1760 ; then, more directly, *Sword v. Blair*, June 23. 1790.

A penalty is not consistent with the nature of a bill, and has been found to be fatal to it ; *Drummond v. Graham*, Dec. 9. 1743. But, when the bill has contained a penalty conform to law, it had no effect on the bill, because, by law, no penalty is due ; *M'Niell v. Campbell*, Jan. 24. 1741 ; and *M'Lauchlan*, Jan. 2. 1760.

A substitution in a bill, as, where it is made payable to the drawer, or order ; ' or, failing him by decease, to his second son, ' was found to annul the bill ; *Inglis v. Wiseman*, July 27. 1739, Clerk Home, No. 130.

*Stamps.*

7. *Stamps.*

It is necessary that the bill be written on the stamp required by law. But it does not vitiate the bill, that it is written on one of a higher value than the stamp-acts require; Bowack, 21. June 1804.

In concluding the subject of the form of the bill, it is only necessary to add, that it ought to be written fairly, without any erasures, and so as not to admit of fraudulent enlargement; of which we have an instance, where a bill was written out, without any writing on the stamps, for a sum of 50*l.*, which gave an opportunity to the drawer of the bill to introduce the words 'four hundred,' so as to render it a bill of 450*l.* In this case, the fraud was done with such art, that the banker, with whom the bill was discounted, could not be blamed, nor any carelessness imputed to him; and therefore the Court threw the loss on the acceptor, through whose inattention, in signing a bill that admitted of such a fraud, the loss had truly arisen; *Graham v. Gillespie & Co.*, Jan. 27, 1795.

### 8. *The Transmission of the Bill.*

The bill is transmitted by indorsation; which consists in the drawer, where the bill is made payable to himself, or the person to whom the bill is made payable, writing on the back of the bill, 'Pay the contents to C,' signed 'A;' or simply, by the creditor subscribing the bill, and leaving the indorsation blank. These indorsations convey the right to the person in whose favour the indorsation is made, and the drawer and acceptor are jointly and severally liable to him for the contents of the bill, provided it shall be properly negotiated, and no payment recovered from the acceptor.—It may happen, however, that the indorser has no interest in the transaction; and, though desirous of transmitting the bill, is unwilling to give it his credit. In that case, he indorses the bill—'Pay the contents to E, without recourse on me, D.' This will free D from any responsibility.—Indorsations have no date.—A bill is indorsable, although the words, 'or order,' be wanting in the body of the bill.

*Negotiation*

9. *Negotiation of the Bill.*

Negotiation of a bill consists in that procedure which is necessary for procuring the acceptance of the person drawn upon, and the payment of the bill ; or, failing thereof, that procedure by which the failure is intimated to the drawer and all concerned.

When a bill is made payable against a certain day, or so many days after date, the acceptance of the bill to the person drawn on, can make no change in the term of payment ; and therefore, Mr Erskine (b. 3. tit. 2. § 82.) lays it down as law, that the holder is under no obligation to present it, until it falls due ; and, where the bill is due so many days after sight, although a delay to present it will affect the term of payment, yet a short interval is allowed to the holder, as naturally following the confidence placed in the person to whom such a form of draught is given ; but this must not be improperly stretched ; *Falls v. Porterfield*, June 17. 1766. The acceptance of a bill payable so many days after sight, must be dated, that the term of payment may be ascertained : the days are counted, without including the day of

acceptance. Acceptance is made by the subscription of the person drawn on. Acceptance by initials, or by a mark, are neither of them capable of making a formal bill : But where it has been subscribed by notaries and witnesses, it has been sustained ; Clerk Home, No. 61 : Where there were no witnesses, it was rejected ; Buchanan *v.* Duncan, June 27. 1765. Nor is it absolutely fixed, that even witnesses would render it in all cases good ; since, in Clerk Home's case, the debtor was alive, and it was founded on, that he did not deny having given authority to the notary to subscribe for him.

Where the person drawn on refuses to accept, a protest must be taken for non-acceptance ; or, where he accepts, but refuses to pay ; or where payment is in any case refused ; a protest for not-payment must be taken on the third day of grace ; or, if that falls on a Sunday, on the Saturday preceding, being the second day of grace. Of these protests, the following are examples.

*Notarial*

*Notorial Instrument of Protest on a Foreign Bill.  
for Nonacceptance.*

[Insert here a copy of the bill.]

On this day, the                      of                      one  
thousand eight hundred and seven.

AT the request of                      , bearer of the original bill of exchange, whereof the above is a true copy, I, A B of Glasgow, notary-public, by Royal authority duly admitted and sworn, did exhibit the said bill to C D, on whom the same is drawn, and demanded that he should accept the same ; whereunto he answered (here insert the answer): WHEREFORE, I, the said notary-public, at the request foresaid, have protested, and, by these presents, do solemnly protest, as well against the said C D, and the drawers and indorsers of the said bill, as all others whom it may concern, for exchange, re-exchange, costs, charges, damage and interest, suffered, and to be suffered, for want of acceptance of the said bill. THIS done and protested in GLASGOW, in the presence of E F and J G, witnesses.

*In testimonium veritatis,*

A B, N. P.

*Instrument of Protest of an Inland Bill.*

[The bill to be copied here, with all its signatures, and indorsements, and markings.]

At , the day of , eighteen hundred and ten years.

WHICH DAY, the principal bill, above copied, was, where payable, duly PROTESTED, at the instance of A, merchant in , the drawer, against the above-designed acceptor, for non-payment of the contents, and for interest, damages, and expenses, as accords: WHEREUPON instruments were taken in the hands of me, notary-public, subscribing, in presence of C and D, residents in , witnesses specially called to the premises.

*Præmissa attestor.*

E—, N. P.

*Instrument of Protest of a Promissory Note.*

[The note, as in the former case, to be copied here, with all its markings, subscription, &c.]

At , the day of , eighteen hundred and ten years.

WHICH DAY, the principal promissory note, above copied, was, in the personal presence of the

the said A, (design him), grantor thereof, duly PROTESTED, at the instance of the said B, therein designed, to whom the same is payable, against the said grantor, for non-payment of the contents thereof, and for interest, damages and expenses, as accords : WHEREUPON instruments were taken in the hands of me, notary-public, subscribing, in presence of C and D, (design them), witnesses specially called to the premises.

E—, N. P.

*Protest, where the Notary cannot obtain Admittance to the Dwelling-house.*

[Copy the note as before.]

WHICH DAY, I, notary-public, subscribing, at desire of the above-designed A, to whom the principal promissory note, above copied, is payable, passed to the dwelling-house of the said B ; and finding the door thereof shut, I gave six audible knocks at the said door ; and then, after exhibiting and reading over the said promissory note, I demanded payment thereof ; but neither the said B, nor any person in his name, appeared to pay the same : THEREFORE, I, the said notary-public, duly PROTESTED the said promissory note, at the instance of the said A, against the said grantor, for non-payment of the contents, &c. (as before.)

*Where*



*Where the Protest is against the Indorsers also.*

[Copy the note as before.]

WHICH DAY, the principal bill, above copied, was, where payable, duly PROTESTED, at the instance of the above , not only against the above-designed , acceptor, for not-payment of the contents, but also against the drawer , and the whole other indorsers, jointly and severally, for recourse, and for interest, damages and expenses, as accords : WHEREUPON, &c.

*Protest, where there is no particular Place of Payment.*

[Copy the note as before.]

WHICH DAY, I, notary-public, subscribing, at the request of the above , indorsee, passed to the Market-cross and Exchange of Edinburgh ; and, at each of the said places, after exhibiting and reading over the said bill, I demanded payment thereof ; but, as neither the said acceptor, nor any person in his name, appeared to pay the same : THEREFORE, I, the said notary, duly PROTESTED the said bill, at the instance of the said , not only against the acceptor, for not-payment

payment of the contents thereof, but also against the drawer and indorsers, jointly and severally for recourse, and for exchange, reexchange, interest, damages and expenses, as accords : WHEREUPON instruments, &c.

It may happen, that the person drawn upon has no funds of the drawer's in his hands, and so does not choose to accept the bill ; though he may nevertheless be desirous to prevent the bill from being returned on the drawer. This is done, by accepting it under protest ; or, perhaps, a third party accepts it in this manner. Where this takes place, it is done under form of instrument ; of which the following is an example.

*Instrument of Acceptance, supra Protest, by a Third Party.*

AT GLASGOW, the       day of       ,  
eighteen hundred and seven years.

IN PRESENCE of me, A B, notary-public, residing in Glasgow, by royal authority duly admitted and sworn, and of the witnesses subscribing, APPEARED C D, merchant in Glasgow, alongst with I K, the holder of an original bill of exchange, dated the 6th day of February last,  
drawn

drawn by E F, of the island of Jamaica, upon G H, merchant in Glasgow, whereby the said E F ordered him, ninety days after sight, (second and third of the same tenor and date unpaid), to pay to the said I K, or order, the sum of three hundred and fifty pounds Sterling ; which bill the said I K exhibited, together with a protest, at his instance, against the said G H, the drawee, for nonacceptance ; AND then and there, the said C D declared, that, in order to prevent the return of the said bill, and the charges which might thereby be occasioned, he would, and did accept of the same, for the honour of the said E F, the drawer ; AND PROTESTED, that his said acceptance should no otherwise be construed ; and that he reserved all right of action and relief, competent to him, against the said E F, in consequence of his acceptance of the said bill, as accords with law ; WHEREUPON the said C D took instruments in my hands. THIS DONE and PROTESTED, before, and in presence of M N and O P, witnesses to the premises specially called and required.

Sometimes this is done by what is termed '*Act of Honour* ;' which is subjoined to the protest against the person drawn on.

THEREAFTER, the same day, in presence of me, the said notary-public, and witnesses aforesaid,

said, appeared, personally, the said G H, who declared, That notwithstanding he would not accept the said bill, in the form in which it was drawn, stating that there was value in his hands, yet he would accept the same under protest, for honour, and on account, of the said E F, holding him liable to him for his reimbursement, in due form of law.

*Actum ut supra.*

L—, N. P.

These protests being taken, the next step is, to intimate the fate of the bill to all concerned; that they may be enabled to take the necessary steps for securing themselves. This must be done, in the case of an inland bill, within 14 days; and, in the case of a foreign bill, by the next post; and indorsers must make intimation, without any delay, (*Baldwin v. Orr*, June 1792, *Bell's Cases*). A failure of intimation, will throw the loss on the person guilty of the omission. But as this proceeds on the idea, that the omission has truly occasioned a loss, which implies that the drawer had funds in the hands of the person drawn upon; it follows, that where the person drawn on has no funds of the drawer in his hands, the want of due negotiation cannot be urged against the holder; *Hill v. Menzies & Anderson*, June 5th, 1805.  
It

It is different, where the case occurs with an indorsee ; for he ought to be enabled to operate his relief, and is entitled to claim strict negotiation from the holder ; *Ferguson & Co. v. Belch*, January 17th, 1803. Where, however, the bill has been indorsed after the term of payment of the bill, strict negotiation is not required : it is sufficient, that the holder shall, within a reasonable time, intimate the want of payment ; *Kilkerran, June 6th, 1749, Forbes v. Young*.

10. *Diligence on Bills.*

This subject will be found treated of in Vol. VI. p. 439, first edition ; to which the reader is referred.

CHAP. II. OF THE ASSIGNATION AND  
CONVEYANCE OF PERSONAL OBLIGATION.

IN the preceding Chapter, I have endeavoured to give examples of the Personal Bond, and to submit to the reader a general view of the doctrine of Bills; and I now proceed to those forms by which the right of the original creditor is transferred to a new one. This is done by the Assignation; and where there is a second transmission, the deed is termed a Translation; or, where the right is turned back to the cedent, it is termed a Retrocession.

There is no very obvious reason why the transmission to a second assignee on the returning the right to the first, should create a change either in the style of the deed, or even in its title, since the object must be so precisely the same in all these cases: yet we find in practice, that there is a difference in the forms; and Mr Ross, in his lecture on this deed, has explained the cause, with his usual ingenuity.

His idea seems to be this: That our assignation was originally nothing more than the appointment of an attorney for the purpose of

recovering the debt ; an assignation or direct conveyance to a new creditor not being at that time allowed by law, on account of the increase of lawfuits that was supposed to spring from the sale of debts : That the same rule prevailed in England, and still nominally prevails there : That in France, again, where the Roman law was received as the common law of the kingdom, a direct transmission of the debt to the assignee was authorised. It is to our connexion with France, and to our predilection for the civil law, that he attributes the mingling of the two forms ; that is, of the bare nomination of an attorney, which he considers to be the original form of our law, with the direct conveyance in favour of the assignee, which he represents as a form of French conveyancing.

The history of the assignation is, perhaps, not of much practical importance, especially if we estimate it by the marked indifference with which Stair, in particular, speaks of the terms of this deed. \* But still it may be necessary

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\* ‘ Though the ordinary style of the assignation be known,  
 ‘ yet any terms that may express the transmission of the  
 ‘ right assigned from the cedent to the assignee, will be  
 ‘ sufficient ; as, if the cedent assign, transfer and dispone,

cessary to know where we ought to look for the origin of our forms, and for the materials of their history ; and certainly this distinction betwixt the Assignment, and the Translation and Retrocession, ought to induce the student to compare, and to consider with attention, the forms of these different conveyances.

In order to bring this class of deeds regularly and fully into view, I shall first give an example of the Simple Assignment ; of its Intimation ; of the Translation ; and of the Retrocession : and I shall next give examples of the Assignment, as it occurs in the various transactions of business, and such as may be best calculated to show the changes that take place on this class of deeds.

*An Assignment of a Bond.*

I B, CONSIDERING that A, by his bond dated  
, acknowledged that he had, of that

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‘ make over, set over, gift or grant, the thing assigned to  
‘ the assignee ; or nominate and constitute him his cession-  
‘ er, assignee, donator, or procurator to his own behoof ; and  
‘ therefore, an assignment to a bond was found valid both  
‘ against principal and cautioners, both being in the dispo-  
‘ sitive clause, though the cautioners were omitted in the  
‘ clause “ with power,” &c. which was not thought a ne-  
‘ cessary clause. Had. Dec. 12. 1622. Johnston.’ Stair,  
p. 381.



date, borrowed and received from me the sum of 500l. Sterling, which sum the said A bound and obliged him, his heirs, executors and successors whomsoever, to repay to me, my heirs, executors or assignees, and that at the term of Martinmas then next, with 100l. Sterling of liquidate penalty in case of failure, and the due and ordinary interest of the said principal sum, from and after the date of the said bond, to the said term of payment, and thereafter yearly and termly during the not-payment of the said principal sum, as the said bond bears; AND SEEING that C has made payment to me of the foresaid principal sum of 500l. Sterling, and interest due thereon from the term of Whifunday last, extending in whole, at this date, to the sum of                      Sterling, of which sum I hereby grant the receipt; Therefore, I hereby MAKE and CONSTITUTE the said C, his heirs and assignees, my lawful cessioners and assignees, NOT ONLY IN, and TO, the foresaid principal sum of 500l. Sterling, with the said sum of 100l. Sterling of liquidate penalty, and whole bygone interest due on the said principal sum since the term of Whifunday last, (all former interest having been paid up), and in time coming during the not payment of the said principal sum; BUT ALSO IN, and TO, the said principal bond itself, whole tenor and contents thereof, with all that has followed or is competent to follow thereupon; SURROGATING and SUBSTITUTING

TUTING the said C, and his forefaids, in my full right and place of the premises; WITH POWER to them to ask for, and uplift, the sums of money, principal, interest, and penalty hereby assigned; AND on receiving payment, to GRANT DISCHARGES or conveyances thereof, either in whole or in part, AND GENERALLY every other thing to do in the premises which I might have done myself before granting hereof; WHICH ASSIGNATION above written, I BIND and OBLIGE myself and my forefaids to WARRANT to the said C, and his forefaids, from all facts and deeds, done or to be done by me in prejudice thereof; AND I have herewith DELIVERED up the said principal bond to the said C, to be used by him and his forefaids, as their own proper writ and evident in all time coming. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or in other Judge's books competent, therein to remain for preservation, and that all execution necessary may follow, on a decree to be interponed hereto in common form; and, for that purpose, I CONSTITUTE

MY PROCURATORS, &c. In

Witness whereof, &c.

*Another Style of the Assignment.*

I B, in consideration of the sum of  
 Sterling, instantly paid to me by C, whereof I  
 M 2 hereby

hereby acknowledge the receipt, do hereby MAKE and CONSTITUTE the said C, his heirs and assignees, my lawful and irrevocable cessioners and assignees, IN and TO the sum of 500l. Sterling, 100l. Sterling of penalty, and interest of the said principal sum from Whitsunday last to the date hereof, and in time coming during the not-payment of the said principal sum, all contained in a bond, dated , granted to me by A, payable at Martinmas then next, and bearing interest from ; AND IN and TO the said bond itself, whole clauses, tenor, and contents thereof, with all that has or is competent to follow thereon; SURROGATING and SUBSTITUTING the said C, or his forefaids, in my full right and place of the premises for ever; with full power to him and them, to ask for and uplift the sums of money hereby assigned, and, on receiving payment, to grant discharges or conveyances thereof, either in whole or in part; and, generally, every other thing to do in the premises which I might have done myself before granting hereof; AND I BIND and OBLIGE me, and my heirs and successors, to WARRANT this ASSIGNATION from my own proper facts and deeds, done or to be done by me, in prejudice hereof; AND having DELIVERED UP to the said C the said principal bond, to be kept and used by him at pleasure, I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein

therein to remain for preservation, and that all execution necessary may proceed on a decree to be interponed hereto, in common form ; AND, for that purpose, I CONSTITUTE

MY PROCURATORS, &c.

In witness whereof, &c.

Either of these forms may be used. The former seems to be better adapted to the Affignation, where diligence has been done on the bond, or where the cedent has acquired right by confirmation ; the latter, where a bond, or bill, on which no diligence has followed, is assigned by the original creditor : And I shall now mark out those changes which take place on the Affignation, from the narrative of the deed, the state of the grantor or receiver, or the extent of the warrandice.

## ALTERATIONS ON THE NARRATIVE.

*Where diligence has been done on the Bond.*

1 B, CONSIDERING that A, by his bond, dated  
 , for the causes therein specified,  
 bound and obliged him, his heirs, executors and  
 successors whomsoever, to content and repay to

me, my heirs, executors or assignees, the sum of 500l. Sterling of principal, and that against the term of Martinmas then next, with 100l. Sterling of liquidated penalty in case of failure, and the legal interest of the said principal sum, from and after the date of the said bond, to the said term, of payment, and thereafter during the not-payment of the same, as the said bond, of date fore-said, registered in the books of Council and Session (office           ), the            day of           , more fully bears: THAT upon the said bond I raised letters of horning, at my instance, dated and signeted           ; and, in virtue thereof, caused charge the said A, to make payment to me of the foresaid principal sum, penalty and interest, as due in the said bond; and thereafter raised letters of caption thereon, dated and signeted           ; as the said letters of horning, with the executions thereof, and letters of caption, also more fully bear; AND SEEING, &c. (*as in the first example.*)

*Where the Cedent has Right as Executor, and where he has obtained Decree against the Heir of the original Debtor.*

I C, son, and executor decerned and confirmed to the deceased B, CONSIDERING that the also deceased A, by his bond bearing date           , and

and registered in the books of Council and Session (office           ), the           , for the causes therein specified, bound and obliged him, and his heirs, executors and successors whomsoever, to pay to the said deceased B, my father, and his heirs, executors or assignees, the sum of 1000l. Sterling, and that against the term of Lammas then next; with 200l., money foresaid, of liquidate expenses, in case of failure; together with the legal interest of the said principal sum, from the date of the said bond to the said term of payment, and yearly, termly, and continually thereafter, during the not-payment; IN and TO which sum of 1000l. Sterling of principal, 200l., money foresaid, of liquidated expenses, and interest of the said principal sum, from and since           , and in time coming, contained in and due by the foresaid bond, AND TO the said bond itself I have right, as executor, nominate, decerned and confirmed to my said deceased father, agreeably to the confirmed testament in my favour, expedite before the commissaries of the commissariat of           , of date           , wherein the said bond is given up and confirmed, (or, 'To the said bond I have right as executor dative, *qua* nearest in kin decerned and confirmed to the said deceased B, my father, before the commissary of           , as by confirmed testament, bearing date           , wherein the said bond is given up and confirmed; ' or, *if the will has been proved in England,*

say, ' By the last-will and testament of the said  
 ' deceased B, my father, bearing date ,  
 ' which was duly proved in the prerogative court  
 ' of ; and thereupon letters of adminis-  
 ' tration were granted to me as executor of the  
 ' said will, conformably to the probate and let-  
 ' ters of administration issued from the said court,  
 ' of date ;' ) AND FURTHER CONSIDER-  
 ING, that, upon the , I obtained decree  
 and sentence, at my instance, before the Lords of  
 Council and Session, against A, now of ,  
 eldest son and heir of the said A, DECERNING  
 and ORDAINING him, as representing the said de-  
 ceased A, his father, on the passive titles therein  
 mentioned, to make payment to me of the fore-  
 said sum of 1000l. Sterling of principal, 200l.  
 Sterling of penalty, and interest of the said prin-  
 cipal sum from and since , and in time  
 coming, till payment, contained in and due by  
 the bond above narrated ; ON WHICH decree I  
 raised LETTERS OF INHIBITION, at my instance,  
 against the said A, now of , which were  
 dated , and are, with the executions there-  
 of, duly registered in the general register, the  
 ; AND ALSO, on the said decree I raised  
 letters of horning, containing a warrant of ar-  
 restment against the said A, now of ,  
 which are dated and signeted ; and, by  
 virtue thereof, I not only caused charge the said A  
 to make payment, but I used arrestments in the  
 hands

hands of sundry persons, supposed to be debtors to the said A; AND SEEING that D has made payment to me of the sum of 1000l. Sterling of principal, 75l. as the interest thereof from the term of , and of the sum of 10l. Sterling as the expence of obtaining the foresaid decree, and using diligence thereon, amounting in whole, the sums presently received by me, to the sum of 1085l. Sterling, whereof I hereby acknowledge the receipt: THEREFORE I DO hereby MAKE, CONSTITUTE and APPOINT the said D, his heirs and assignees, my irrevocable cessioners and assignees, IN and TO the said principal sum of 1000l. Sterling, 200l. Sterling of liquidate expenses, incurred through failure, and interest of the said principal sum from and since the said term of , and in time coming, during the non-payment, all contained in and due by the foresaid bond, and decree obtained for payment thereof; and IN and TO the said bond itself, and last-will and testament of the said B, my father, in so far as the same relates to the sums hereby assigned, with the foresaid decreet at my instance against the said A, now of , and letters of inhibition and horning raised thereon, and executions thereof, whole clauses, tenor, import, and effect of the said writs, and of all further action, diligence and execution competent, or that may be competent to follow thereupon, and to all that has or may follow thereon; SURROGATING  
and



and SUBSTITUTING, &c. (*The deed, in the remaining part of the form, will correspond with the assignation, p. 177. ; and the whole writs delivered to the assignee will be enumerated in the clause of delivery of writs.*)

*Assignation of the Half of a Bond, where the onerous Cause is a Payment to a third Party.*

I B, widow of , FOR the sum of 1000l. Sterling advanced and paid by D, at my special request, to C my son, for enabling him to prosecute and follow out his business as a merchant, in which he was educated, DO, by these presents, MAKE, CONSTITUTE, and ORDAIN the said D, and his heirs, executors or assignees, my lawful and irrevocable cessioners and assignees, in and to the sum of 1000l. Sterling of principal, and interest thereof from this date, during the not-payment, with 200l. Sterling of penalty in case of failure, being the half of 2000l. Sterling of principal, and 400l. of penalty, contained in and due by a bond granted to me by A, now deceased, bearing date , and carrying interest at the rate of four and a half per cent. ; AND IN and TO the said bond itself, whole tenor and contents of the same ; and TO all action, diligence, or execution competent, or that may be competent thereon ; and that in so far as relates or may be extended to the sums hereby assigned ; SURROGATING and SUBSTITUTING the said D and his forefairs in my full right and place  
of

of the premises above assigned, for ever ; WITH POWER to him and them, to call for and receive the sums of money, principal, interest, and liquidate expenses hereby assigned, and, if needful, to use all manner of legal diligence, either in my name or his own, for recovery thereof ; compound, transact, and agree thereanent ; and, on payment, receipts, discharges, or translations to third parties, to grant, which shall be sufficient to the receivers ; and generally to do every thing in relation to the premises which I might have done before granting of this present assignation, which I BIND and OBLIGE me to, warrant from my own proper facts and deeds only ; AND I have herewith DELIVERED UP to the said D the foresaid principal bond, to be kept for his own security ; BUT, as I still have right to a moiety of the sums contained therein, he, by acceptation hereof, BINDS and OBLIGES him, and his forefaids, to make the said bond forthcoming to me and my forefaids, whenever we shall require the same, on our receipt and obligation to redeliver the same within a reasonable time, and under a suitable penalty : AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation, and that all execution necessary may follow hereon in common form ; and, for that purpose, CONSTITUTE

MY

PROCURATORS, &amp;c. In witness whereof, &amp;c.

*Assignation*

I B, CONSIDERING THAT M, by his bill, dated  
, drawn by him upon, and accepted by A,  
ordered him, against the , to pay to him, or  
order, at , 35l. 15s. Sterling, value deliver-  
ed him in goods ; which bill (5l. 15s. thereof be-  
ing paid to the said M) was indorsed to me, and  
was, upon the , protested, at my instance,  
against the said A, for not payment of the balance  
of 30l. remaining due on the bill, and for interest  
and expenses, as an instrument of protest taken,  
registered in the books of Council and Session  
(office ), the , more fully bears :  
THAT, on this registered protest, I raised letters  
of horning and caption, at my instance, against  
the said A : AND NOW, SEEING that C has made  
payment to me of the said 30l. Sterling, and inter-  
est due thereon preceding this date, with 1l. 9s.  
2d. Sterling of expenses incurred in raising the said  
diligence ; THEREFORE, I DO hereby MAKE, CON-  
STITUTE and APPOINT the said C, his heirs and  
assignees, my irrevocable cessioners and assignees,  
IN and TO the foresaid sum of 30l. Sterling, and  
interest thereof since the same fell due, and in time  
coming, during the not-payment thereof, contain-  
ed in and due by the foresaid bill, WITH the said  
sum of 1l. 9s. 2d. Sterling of expenses paid out by

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me in raising and executing the said diligence ;  
 AND IN and TO the said bill itself (in so far as  
 concerns the foresaid sum of 30l. Sterling, and in-  
 terest due thereon), registered protests, letters of  
 horning and caption raised thereon, whole tenor  
 and contents thereof ; and to all action, diligence,  
 and execution competent to me, for payment of  
 the said principal sum, and interest, or expenses,  
 with all that has or may follow thereon ; SURRO-  
 GATING and SUBSTITUTING, &c. (*in common  
 form.*)

*Assignment of two accepted Bills and Instrument  
 of Protest, a Draft on another Debtor, and se-  
 veral Letters by him promising Payment of the  
 Whole.*

I A, CONSIDERING that B, by his bill, dat-  
 ed \_\_\_\_\_, drawn by him upon, and accepted  
 by C, brother to D, ordered him, on the \_\_\_\_\_,  
 to pay to me, at \_\_\_\_\_, the sum of 200l. Ster-  
 ling, value received in black cattle ; which bill  
 was, on the \_\_\_\_\_, duly protested, at my in-  
 stance, against the said C, for not-payment of the  
 contents, and for damages, interest and expenses,  
 as accords, as an instrument of protest taken  
 thereon, registered in the books of Council and  
 Session, \_\_\_\_\_ bears : As ALSO, the said B,  
 by his other bill, bearing date \_\_\_\_\_, drawn  
 by \_\_\_\_\_

by him upon, and accepted by the said C, ordered him, on the                    then next, to pay to him, or order, at the house of                   , the sum of 40l. Sterling, value in black cattle, which bill was indorsed by the said B to me; and also the deceased B, by his bill, bearing date                   , drawn by him upon the said D, ordered him, against                   , to pay to the said B, or his order, in                   , the sum of 39l. 12s. 6d. Sterling, being the additional price, 2s. 6d. each, for 317 cows and stots, delivered to the said D, as by his missive to the deceased B; which draft is indorsed by B to me, and is not accepted; but, for the payment whereof, and of the two accepted bills above recited, the said D is jointly liable with the said C, in terms of several letters addressed by him to the said deceased B and me, viz. in terms of a letter written by the said C, of date                   , and addressed to the said deceased B, wherein the said C writes, that he had that day settled a bargain with B for all the marketable cattle on his estate, and that for his brother the said D's behoof, as well as his own; and he obliged him to receive them, and pay for each cow and stot 3l. Sterling: As ALSO, in terms of a missive written by the said D, dated                   , addressed to the said deceased B, wherein he writes, that he approved of the bargain for five years, and desires the contract to be written out and sent to him, that he might sign it; and, in the mean time, he thereby obliged himself, that his brother's engagements

gagements for that year's cattle should be duly honoured and fulfilled : As ALSO, by another letter written by the said D, of date , addressed to me, wherein he writes, ' I understand, from my brother, who has bargained with B for all his cattle, that he has drawn on me, payable on , for 200l. Sterling, at Edinburgh ; these are signifying, that I will accept of it ; and, if you can indulge me till , it will prevent expense and trouble ; and I shall reckon it a favour : ' AND ALSO, in terms of another missive, dated , written by the said D, and addressed to the said deceased B, wherein he writes, &c.—(*here some other letters were narrated*)—as the said several letters more fully bear : AND SEEING that the said two accepted bills, and unaccepted draught, were made payable to me, and indorsed to me in trust, for behoof of the said B ; and he being desirous that I should denude myself thereof, and reconvey the same to him : THEREFORE, I have ASSIGNED and DISPONED to and in favour of the said B, and his heirs and assignees, the foresaid principal sum of 200l. Sterling, and whole interest due thereon, contained in the bill above recited, accepted by the said C ; As ALSO, the foresaid other principal sum of 40l., and interest due thereon, contained in the said C's other accepted bill, also above recited ; AND ALSO the other sum of 39l. 12s. 6d. Sterling, contained in the said deceased B's draught on the said D, also above

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above recited ; TOGETHER with the said two accepted bills, and unaccepted draught themselves, whole import and effect of the same ; WITH the said instrument of protest at my instance, and expense of protesting and registering the said bill ; WITH the said several missives above recited, addressed to me ; and with all action, diligence, and execution competent, or that may be competent in the premises, and with all that has or may follow thereupon ; SURROGATING and SUBSTITUTING, &c. (*in common form.*)

*Assignment of a Bond of Corroboration of a Bill  
by a Liferentrix and two Fiars.*

WE A, widow of the deceased O, and B and C, only surviving children of the marriage betwixt the said A and O, considering that the deceased D, by his bond of corroboration, bearing date , bound and obliged him, his heirs, executors and successors (in corroboration of his accepted bill to the said deceased O, therein narrated), to pay to me, the said A, in liferent, for my liferent use, and to us, the said B and C, our heirs, executors or assignees, in fee, the accumulated sum of 164l. Sterling, and that against the term of Martinmas then next, with 30l. Sterling of liquidate penalty in case of failure, and the legal interest of the said principal sum, from the

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term

term of Whitsunday then last to the foresaid term of payment, and yearly and termly thereafter during the not-payment, as the said bond of corroboration more fully bears : AND SEEING that C has now and formerly made payment to me, the said A, of the whole interest of the said principal sum of 164l. Sterling, from the term of Whitsunday to the date hereof, whereof I acknowledge the receipt ; AND that he has also advanced and paid to us, the said B and C, with consent of me, the said A, the foresaid principal sum of 164l. Sterling, whereof we, the said B and C, acknowledge the receipt : THEREFORE we, the said A, and the said B and C, for our respective rights of liferent and fee, with one consent, have MADE and CONSTITUTED, as we hereby, with one advice and consent, MAKE, CONSTITUTE and ORDAIN the said C, his heirs and assignees, our irrevocable cessioners and assignees, IN and TO the foresaid principal sum of 164l. Sterling, 30l. Sterling of liquidate penalty, and interest of the said principal sum from and since the said term of Whitsunday, and in time coming, during the not-payment thereof, as contained in the said bond of corroboration granted by the said deceased D, in manner above-written ; AND IN and TO the said bond of corroboration itself, whole clauses and conditions thereof, and accepted bill above mentioned, thereby corroborated, and all that has or may follow thereup-



the receipt: THEREFORE we, the said A, B and C, a quorum of the said tutors, DO hereby MAKE, CONSTITUTE and APPOINT the said H, his heirs and assignees, to be our, and our said pupil's lawful and irrevocable cessioners and assignees, NOT ONLY IN and TO the said principal sum, &c. (*The rest proceeds in common form.*)

*By a Curator.*

I G, and we A, B and C, curators nominated to the said G, by the late G, his father, conform to nomination contained in his disposition, of date , whereby he named us, and D and E, to be tutors and curators to his said son; declaring any three of us to be a quorum, as the said nomination, contained in the disposition, of date foresaid, and recorded in the books of Council and Session (office ), the day of , more fully bears; CONSIDERING, &c. (*here the ground of debt is narrated*); AND FURTHER, CONSIDERING that H has made payment to me, the said C, factor for the said G, and his curators, of the sum of Sterling, &c. (*in common form*): THEREFORE I, the said G, WITH the CONSENT of the said A, B and C, a quorum of my said curators, DO hereby MAKE, CONSTITUTE and APPOINT the said H, his heirs and assignees,

to be my lawful and irrevocable cessioners and assignees, NOT ONLY IN and TO, &c.

*By a Factor.*

I B, factor to A, conform to factory in my favour, of date , whereby I am empowered to collect discharges, or assign the sums of money herein after assigned, as the same, recorded in the books of Council and Session (office ), the day of , more fully bears; CONSIDERING (*here the ground of debt by B to A, and the onerous cause of the assignation in favour of C, is narrated in the common form.*) THEREFORE I, as factor foresaid, and in virtue of the powers committed to me by the said factory, do hereby MAKE, CONSTITUTE and APPOINT the said C, his heirs and assignees, to be lawful and irrevocable cessioners and assignees of my said constituent, NOT ONLY IN and TO, &c. (*The assignation will proceed in common form, till you come to the clause of warrandice, which will be thus expressed :*) AND I BIND and OBLIGE my said constituent to WARRANT this assignation from all facts or deeds, done or to be done, by me or him, in prejudice hereof: AND FURTHER, I, the said B, BIND and OBLIGE my said constituent, and his heirs and successors, to RATIFY and APPROVE

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of

of the foregoing assignation, in the whole heads, tenor and contents thereof, and that under the penalty of        Sterling, over and above performance ; AND, having herewith delivered up to the said C the principal bond, with an extract of the factory in my favour, to be used by him and his forefaids, as their own proper writs and evidents, I CONSENT to the REGISTRATION hereof, &c. (*The rest is in common form.*)

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#### ALTERATIONS ARISING FROM THE STATE OF THE RECEIVER.

##### • *Assignation to a Person and his Heirs, excluding Executors.*

THE deed will be in the same form with any other assignation, the dispositive clause alone excepted, which will be thus expressed. ‘ Make, ‘ constitute and appoint the said        , ‘ and his heirs and assignees (secluding his executors, not only from the said principal sum, but ‘ also from any interest or expenses already due ‘ or incurred, or that may hereafter fall due ‘ thereon, or be incurred), my irrevocable cessioners and assignees, in and to the said principal sum,’ &c.

*Assignation*

*Assignment to a Husband and Wife in conjunct Fee and Liferent, and to the Children in Fee; whom failing, to the Heirs of the Husband, with power to the Husband to uplift, under an Obligation to re-employ the Money.*

I A, for a sum of money equivalent to the sums herein after assigned, paid to me by B, for himself, and in name of C his wife, do, by these presents, ASSIGN and DISPONE, TO and IN favour of the said B, and C his wife, and longest liver of them two, in conjunct fee and liferent, for her liferent use allenary, and to the heirs to be procreated betwixt them in fee; whom failing, to the nearest heirs and assignees whomsoever of the said B, the principal sum of 500l. Sterling, and interest thereof from the term of Whitsunday last to the date hereof, and in time coming during the not-payment, with 100l. Sterling of liquidate expenses, contained in a bond granted by \_\_\_\_\_ to me, bearing date \_\_\_\_\_; WITH the said bond itself, whole tenor and contents thereof, and all that has followed, or may follow thereupon; SURROGATING and SUBSTITUTING, by these presents, the said B and C, and their foresaids, for their respective rights of liferent and fee, in my full right and place of the premises for ever; WITH full power to them to ask and uplift the sums of money before assigned, and, on receiving the same, to grant dis-

charges or conveyances thereof, either in whole or in part; and, generally, every other thing to do in the premises which I might have done myself before granting hereof: And I BIND and OBLIGE me, my heirs, executors and successors, to WARRANT this assignation from all facts and deeds done, or to be done, by me in prejudice hereof: DECLARING ALWAYS, that the lifeferent right of the foresaid sum hereby provided to the said C, shall be imputed *pro tanto* of the provisions conceived in her favour by the contract of marriage betwixt her and the said A, and the same are hereby held to be so far implemented: BUT DECLARING ALSO, that the said B shall have full power and liberty to uplift, and pursue for, the said sums, principal, interest and liquidate expenses, and to discharge the same, or grant conveyances thereof to third parties, which shall be valid to the receivers, and that without the consent of the said C, or of their children; HE the said B being always BOUND and OBLIGED, in that event, to re-employ the foresaid sums of money, and to take the rights and securities thereof, conceived in favour of him and his said spouse, in conjunct fee and lifeferent, for her lifeferent use allenarly, and of the heirs to be procreated betwixt them, in fee; whom failing, to the heirs and assignees whomsoever of the said B; and I have herewith delivered up to the said B the said principal bond, to be kept and used by him and his foresaids, as their  
own

own proper evident in all time coming. AND I CONSENT to the REGISTRATION hereof, &c. (in common form.)



*Assignment to a Mother for behoof of her Children.*

I A, CONSIDERING (*here the ground of debt will be narrated*): AND FURTHER, CONSIDERING that C, widow of the deceased D, has, in name of E and F her children, made payment to me of the said sum of 500l. Sterling, with the interest due thereon from the term of Whitsunday last, amounting together to the sum of 520l. Sterling, whereof I hereby acknowledge the receipt; THEREFORE, I DO hereby MAKE, CONSTITUTE and APPOINT the said C, as trustee for behoof of her said children, my lawful cessioner and assignee, NOT ONLY IN and TO the foresaid principal sum of 500l. Sterling, contained in and due by the bond above narrated, and the interest due thereon since the said term of Whitsunday last, and in time coming during the not-payment thereof, with the foresaid liquidate penalty in case of failure; BUT ALSO IN and TO the said bond itself, with all that has followed, or is competent to follow thereupon; SURROGATING and SUBSTITUTING the said C in my full right and place of the premises, but in trust always, as before said; with power to her, at any time in her life, to uplift and discharge the said sums of money without the consent of her said children;

children ; and, failing her by death, with power to her said children to intromit with and discharge the same themselves, and to apply the sums to their own use equally ; AND I have herewith delivered up the said bond to the said C. AND I CONSENT to the REGISTRATION hereof, &c. (*in common form.*)

*Assignment to a Wife in Liferent, exclusive of the Husband's jus mariti, and to the Children in Fee.*

The debt to be assigned will be narrated in common form. ‘ And that I the said A, for the paternal affection which I bear to C my daughter, spouse to D, being resolved to convey the above debt to her and her children exclusively ; THEREFORE, I DO hereby MAKE, CONSTITUTE and APPOINT the said C, my daughter, in liferent, for her liferent use allenary, (but exclusive of her present, or of any future husband's *jus mariti*, or of his or their debts or deeds), and to the children procreated or to be procreated of her body, of this or any subsequent marriage, equally amongst them, in fee ; whom failing, my own nearest heirs or assignees whomsoever, to be my lawful and irrevocable cessioners and assignees, not only in and to the said principal sum, &c. (*The rest will be in common form, with the addition of the following clause immediately before the clause of delivery*):

BUT

BUT DECLARING ALWAYS, and it is hereby specially PROVIDED and DECLARED, that no debt or deed of the said D, or of any future husband of my said daughter, shall anyways affect or burden this present right or conveyance, or any part of the sums hereby conveyed ; but that the same shall remain as an alimentary fund for my said daughter, free of any such debts or deeds ; and the receipts and discharges to be granted by herself alone for the interest, without the consent of her husband, are hereby declared to be valid to the receiver :  
AND having DELIVERED UP, &c.

*Assignations to Minors.*

In the assignation to the minor, the money will bear to be advanced by the tutor or curator, or by their factor, as the case may be ; and the right will be taken to the minor himself, his heirs and assignees, in common form, without any notice of the tutors, or of the curators, in that part of the deed.

ALTERATIONS



### ALTERATIONS ON THE CLAUSE OF WARRANTICE.

The common warrantice is from fact and deed only, as expressed in the preceding forms : but there may be a different degree of warrantice stipulated ; and I shall put them down in their order, beginning with the common clause.

#### *Warrantice from Fact and Deed.*

‘ WHICH ASSIGNATION I BIND and OBLIGE me, my heirs and successors, to WARRANT to the said                      and his forefairs, from all facts and deeds done or to be done by me, in prejudice thereof. ’

#### *Absolute Warrantice.*

‘ WHICH ASSIGNATION I BIND and OBLIGE me, my heirs and successors whomsoever, to WARRANT to the said                      and his forefairs, at all hands, and against all deadly, as law will. ’

*Warrantice*

*Warrantice that the Debtor is solvent.*

‘ WHICH ASSIGNATION above written, I BIND and OBLIGE me, my heirs and successors whomsoever, to warrant to the said , and his forefairs, at all hands, and against all deadly, as law will : AND FURTHER, that the said (the debtor) is, at this date, solvent. ’

*Warrantice that the Debt shall be made effectual to the Receiver.*

‘ WHICH ASSIGNATION above written, I BIND and OBLIGE me, my heirs and successors whomsoever, to WARRANT to the said , and his forefairs, at all hands, and against all deadly, as law will : AND FURTHER, I hereby expressly WARRANT, to him and them, the solvency of the said debtor, his heirs and successors, at whatever time payment may be demanded from him or them ; and whatever loss may be sustained by their insolvency, I bind me and my forefairs to make up and repay to the said and his forefairs. ’

In the forms of the assignation which I have given, I have sufficiently explained the changes that will commonly be found to take place on  
this

this deed ; and I now proceed to such other forms as may present themselves in practice.

*Assignment by a Purchaser, of a Subject insured in the Edinburgh Friendly Insurance-office, he declining to pay the Premium to the Seller.*

I B, CONSIDERING, that A having, on the , exposed to sale, by public roup, that lodging or dwelling-house, &c. conformably to articles of roup ; whereby it is provided and declared, that the said A should grant to the purchaser of the said subjects a valid disposition, containing absolute warrandice, and all other usual and necessary clauses ; and, in particular, an assignation to the right of insurance in *the Edinburgh Friendly Insurance* against losses from fire, from and after the time of his entry ; reserving to him, the said A, his heirs and assignees, the dividends arising therefrom in all time coming ; and, for recovery thereof, it is thereby provided, that the purchaser shall be obliged to sign, at the time of executing the bond for the purchase-money, an assignation or conveyance of the said dividends, or such deeds as, by the regulations of the said Society, may be necessary for enabling the said A and his forefairs to draw these dividends, unless the purchaser shall include, in his bond for the price, the premium paid for the be-

profit of the insurance : AND FURTHER, CONSIDERING that I became purchaser of the said subjects, in terms of the said articles of roup, at the price of 300l. Sterling, for which I have granted bond, and received a disposition from the said A ; and not being inclined to pay up the said premium of insurance, I therefore, in terms of the obligation come under by me, through the said articles of roup, do hereby ASSIGN, CONVEY, and MAKE OVER, to and in favour of the said A, his heirs, executors or assignees, the dividends payable by the said Company, and corresponding to my interest in the stock of the said Company, as proprietor of the said subjects, and in virtue of the disposition and conveyance by the said A to me ; WITH POWER to the said A, and his forefairs, to demand and receive the said dividends, and thereupon to grant receipts and discharges, and generally to do every thing, in relation to the premises, which he the said A could have done, before granting the foresaid disposition in my favour ; WHICH ASSIGNATION I oblige me and my forefairs to WARRANT from our own facts and deeds allenarly : AND I oblige me and my forefairs to renew these presents, in such form and manner, as by the regulations of the said Company may be required, for enabling the said A and his forefairs to draw the said dividends, and that upon their own expense, under a penalty of 10l. Sterling over and above performance ; RESERVING nevertheless

less to me, and my successors, proprietors of the said subjects, the full effect and benefit of the said insurance, and all rights and privileges competent thereupon, excepting that of drawing the said dividend alienably: AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation, and that all execution necessary may pass on a decree to be interposed hereto in common form; and, for that purpose, I CONSTITUTE

MY PROCURATORS, &c. In witness whereof, &c.

*Assignment of a Salary.*

I A, CONSIDERING that I stand indebted to B in the sum of 200l. Sterling, contained in my bill to him, dated \_\_\_\_\_, and payable \_\_\_\_\_, the payment whereof he is willing to postpone till the term of payment of the salary after mentioned; and that I am desirous of securing him in the payment thereof, as far as in my power, by granting the assignment under written: THEREFORE, I do hereby MAKE, CONSTITUTE and APPOINT the said B, his heirs and assignees, my cessioners and assignees, in and to the sum of 50l. Sterling, as the salary due to me by C, allowed, &c. (*here describe the salary*), until the  
2
foresaid

forefaid fum of 200l. Sterling, and interest thereof, is fully paid up ; WITH POWER to the faid B to call for and demand payment of the faid salary of 50l. Sterling yearly, until he be paid the faid debt, and to grant receipts and difcharges thereof, and to do every other thing, in relation thereto, which I could have done myfelf before granting thefe presents. BUT it is hereby DECLARED, that on the faid B's receiving payment of the faid debt, he is, by acceptation hereof, bound to replace me in my full right of the premifes, and to account to me, my heirs and fucceffors, for any overplus he or his forefaids may have received in confequence hereof. WHICH ASSIGNATION above written, I BIND and OBLIGE me to WARRANT from all facts or deeds, done or to be done, by me, in prejudice hereof : AND I CONSENT to the REGISTRATION HEREOF, &c. (*as in the preceding example, p. 208.*)

*Assignment to a Liferent Right.*

I A, for a certain onerous caufe, have MADE and CONSTITUTED, as I hereby MAKE, CONSTITUTE and ORDAIN B, his heirs and affignees, to be my lawful ceffioners and affignees, IN and TO my liferent right of the fum of 500l. Sterling, contained in a bond granted to me by F, for my liferent ufe allenarly, and to the faid B, his heirs,  
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executors and assignees, in fee, dated ,  
 and in and to the said bond itself, whole clauses  
 and obligations therein contained, and all that  
 has or is competent to follow thereon; SURRO-  
 GATING and SUBSTITUTING the said B and his  
 forefaids in my full right and place of the pre-  
 mises; WITH POWER to them to ask and uplift  
 the sums hereby assigned, and, on receiving pay-  
 ment, to grant receipts or discharges thereof, in  
 whole or in part, AND in general to do every other  
 thing, in relation to the premises, which I might  
 have done myself before granting thereof: WHICH  
 ASSIGNATION above written, I BIND and OBLIGE  
 myself, and my forefaids, to WARRANT to the  
 said B, and his forefaids, from all facts and  
 deeds, done or to be done by me in prejudice  
 thereof. And I consent to the registration here-  
 of, &c. (*as in the former example, p. 208.*)

*Assignment to an Annuity declared to be unaffected  
 by the Assignee's Creditors.*

I A, CONSIDERING that B, by his bond of an-  
 nuity, bearing date the , bound and  
 obliged him, his heirs, executors and successors  
 whomsoever, to make payment to me, during all  
 the days of my life, of the sum of 40l. Sterling,  
 at two terms in the year, Whitsunday and Mar-  
 tinmas, by equal portions, beginning the first  
 term's

term's payment at Whitsunday then next, for the half year immediately preceding, and the second term's payment at Martinmas thereafter, and so forth at these two terms during my lifetime, with a fifth part more of each of the said termly payments of liquidate penalty for each term's failure, and the legal interest of the said annuity from the respective terms of payment thereof, during the not-payment of the same ; as the said bond, of date foresaid, more fully bears : AND NOW, for certain causes, I have CONSTITUTED and APPOINTED, as I hereby MAKE, CONSTITUTE and APPOINT C, his heirs and assignees, my irrevocable cessioners and assignees, IN and TO the said yearly annuity of 40l. Sterling, termly penalties and annualrents, as above-mentioned, and that for the half year ending at the term of Martinmas last, and in time coming during my life ; AND IN and TO the said bond itself, whole tenor and contents thereof, with all that has followed, or is competent to follow thereon ; SURROGATING and SUBSTITUTING the said C and his foresaids in my full right and place of the premises ; BUT with this expresse PROVISION, that it shall not be in the power of any of the creditors of the said C to affect the foresaid yearly and alimentary annuity, by arrestment or otherwise, but the same shall still pertain and be payable to the said C, yearly, in manner above written, for an alimentary subsistence to him, as it is so intended and designed



by me, and not to be applied to any other use or purpose whatever ; upon which express provisions and conditions this assignation is granted, and no otherwise ; with power to the said C to uplift and discharge the said annuity, and termly penalties thereof in case of failure ; and, if need be, to use all manner of legal diligence for recovering payment thereof : WHICH ASSIGNATION I BIND and OBLIGE me and my foresaids to warrant to the said C and his foresaids, from all facts and deeds, done or to be done by me, in prejudice hereof. AND having DELIVERED UP to the said C the said bond of annuity, to be kept and used as his own in all time coming, I CONSENT to the REGISTRATION hereof, &c. (*as on page 208.*)

*Assignment of a Literary Work.*

I A, CONSIDERING that I have composed and published a work, entitled (*here the title is entered*), consisting of            volumes octavo, and which has been regularly entered in Stationers' Hall for my behoof ; AND THAT, by letters passed betwixt B, bookseller in Edinburgh, and me, I have agreed to sell him my right of property in the said book, for the sum of 500l. Sterling, and 50l. Sterling for each new edition thereof ; and for which sum of 500l. Sterling, the said B, and with him C and D, booksellers in Edinburgh, have instantly

ly granted their bills, payable, &c. (*here mention the terms of payment*): THEREFORE, in implement of my part of the said agreement, I do hereby SELL, ASSIGN, TRANSFER and MAKE OVER, from me, my heirs and successors whomsoever, TO and IN FAVOUR of the said B, his heirs, executors and assignees, the right of property, or copyright of the said work, with all right, title and interest, which I or my forefairs had, have, or anywise can pretend to the said work, with the benefit of the said entry in Stationers' Hall; WITH FULL POWER to the said B, and his forefairs, to call for a settlement with those booksellers into whose hands copies have been put on return, and to receive from them the price of such copies as have been sold, according to the rules of the trade, and to dispose of the copies remaining on hand at his pleasure, in the same way that I might have done before granting hereof; with power also to SELL and DISPOSE of the said whole work for the use and behoof of himself and his forefairs, in any manner of way he or they shall judge best; AND WITH the EXCLUSIVE PRIVILEGE of reprinting and republishing the same, whenever and as often as he or his forefairs shall incline so to do, and that for the whole years and space allowed to authors by law or by statute: BUT under this CONDITION ALWAYS, that on every new edition of the said work, the said B and his forefairs shall be bound, as, by acceptation hereof, they bind and oblige themselves,

to pay to me, the said A, or to my forefaids, the sum of 50l. Sterling ; which sum shall be paid on the day of publication of each new edition respectively, and shall bear interest from the day of publication respectively, as long as the same remains unpaid ; TURNING, and hereby TRANSFERRING, the whole right of the premises, from me and my forefaids, to and in favour of the said B and his forefaids, whom I hereby SURROGATE and SUBSTITUTE in my full right and place of the premises, for ever ; WITH FULL POWER to the said B and his forefaids, to raise and prosecute, in his or their names, every necessary suit and action in law or in equity, against all and fundry who shall presume to reprint, publish or vend the work hereby assigned, and to recover from such person or persons whatever damages or penalties shall be awarded against him or them ; VESTING hereby, in the said B and his forefaids, the sole right and property of the forefaid work before assigned, as fully and amply in all respects as the same was originally in me ; AND, in general, with full power to the said B, and his forefaids, to exercise every act of property, and every thing in relation to the premises to do, as fully and freely as I the said A could have done before granting hereof : WHICH ASSIGNATION above written, I hereby BIND and OBLIGE myself, and my forefaids, to WARRANT to the said B and his forefaids, from all facts and deeds done or to be done by us in prejudice hereof.

of. AND I CONSENT to the REGISTRATION hereof in the books of Stationers' Hall, AND ALSO in the books of Council and Session, or other Judges' books competent, therein to remain for preservation, and that all execution necessary may pass on a decree to be interponed hereto, in form as effects; and, for that purpose, I CONSTITUTE

MY PROCURATORS, &c. In witness whereof, &c.

*Assignment of the Rents of an Estate, in Payment of an Advance made by the Assignee.*

I A, Earl of , do hereby acknowledge, that B has instantly advanced to me the sum of 500l. Sterling, by indorsing to me a London bill to that amount; WHICH SUM of 500l. Sterling, with the interest thereof from this date, till full reimbursement thereof, I hereby not only allow the said B to retain in his own hands, out of the first and readiest of any funds or subjects of mine which shall be impressed in his hands as my cashier; BUT ALSO, for his further security thereof, I, by these presents, ASSIGN and MAKE OVER to the said B, as much of the first, best and readiest of the rents and feu-duties of my lands, earldom and estate of , due for crop and year , and precedings, by the tenants and feuers thereof, or in the hands of my factors and chamberlains,



Sterling of penalty in case of failure, TOGETHER ALSO with the ordinary annualrent of the said principal sum, from the date of the said bond, to the said term of payment, and yearly, termly and continually thereafter, during the not-payment of the same, as the said bond in itself more fully bears : THAT upon the said bond I led an adjudication, at my instance, and obtained decree therein for the accumulated sum of , which decree is dated , and the abbreviate thereof recorded , as the same also more fully bears: THAT a process of ranking and sale was raised and intented before the Lords of Council and Session, at the instance of R, an heritable creditor of the said B, in the course of which I produced the said bond, and decree of adjudication following thereon, as my interest in the ranking of the said creditors ; and a scheme of division being now made out, dividing the price amongst the creditors, agreeably to the order of ranking settled in the said action, I am, by the said scheme, entitled to draw, against the term of , the sum of 450l. Sterling, as the dividend corresponding to the accumulated sum in my said decree of adjudication, as at the term of ; AND FURTHER, CONSIDERING that I am indebted to C in the sum of 200l. Sterling, by bill dated , drawn by him upon, and accepted by me, payable , together with the interest of the said principal sum, and the expense which

which has been incurred in doing diligence on the said bill, amounting, at this date, to 220l. Sterling, AND THAT I am desirous of securing the said C in payment of the debt due to him in manner foresaid, to the utmost of my power: THEREFORE I have ASSIGNED and DISPONED, as I hereby ASSIGN, DISPONE, CONVEY and MAKE OVER, to and in favour of the said C, his heirs, executors and assignees, the foresaid accumulated sum of                      Sterling, contained in the said decree of adjudication obtained at my instance against the said B, with the said decree of adjudication itself, and bond above narrated, whereon the same proceeds, with the said decree of ranking and preference, and all following, or competent to follow, on the said grounds of debt; WITH FULL POWER to the said C and his foresaids, to ask and pursue therefor, either in my name or in his own; WITH POWER to the said C, and his foresaids, to appear in the said process of ranking, and to draw and obtain payment of such sum or sums as shall be allocated to the said debt, and to grant conveyances, acquittances and discharges thereof, which shall be as sufficient to the receivers as if granted by myself; and, generally, every other thing to do, in relation to the premises, which I could have done before granting hereof; PROVIDING ALWAYS, that the said C, and his foresaids, shall be bound and obliged, as, by acceptance hereof, they BIND and OBLIGE themselves, to

to hold just count and reckoning to me, my heirs and successors, for the sum of money they may receive in consequence hereof: AND that, as soon as he, or his forefairs, shall have received payment of the sums of money contained in the said bill due to him by me, in manner foresaid, and of the expenses of diligence, amounting in whole, as at the date hereof, to the said sum of 220l. Sterling, out of the sums hereby assigned, he, the said C, and his forefairs, shall discharge and deliver up to me or my forefairs, the said bill, and diligence done thereon, to be kept and used by me and my forefairs, at pleasure; AS ALSO, to repon and retrocess me, in and to the grounds of debt hereby assigned, in so far as payment thereof has not been received: WHICH assignation above written, I BIND and OBLIGE me, and my forefairs, to WARRANT to the said C and his forefairs, from the facts and deeds of me, or my forefairs, done or to be done in prejudice thereof: AND, HAVING PRODUCED the said decree of adjudication, and grounds thereof, in the hands of the clerk to the said process of ranking and sale, to which the said C and his forefairs may, at all times, have access, as their own writs and evidents, I CONSENT to the REGISTRATION hereof, &c. (*in common form, as on p. 208.*)

*Assig-*



*Assignment to the Purchaser at a voluntary Sale,  
in Security of his Purchase.*

I A, CONSIDERING that the deceased B, by his bond, of date, &c. (*here narrate the grounds of debt*): THAT, by the articles of roup and sale of the lands of , it was stipulated, that the whole price of the said lands should be applied in paying off the debts of the said B, and that assignments thereof should be taken by the purchaser of the said lands, to be retained by him as securities of his purchase; but in no shape to militate against the said B, his heirs or successors, or any other estate or effects belonging to him; AND FURTHER, CONSIDERING that C, the purchaser of the said lands, has made payment to me, out of the price of the said lands, of the foresaid sum of , contained in the bond above narrated, with of interest due thereon, preceding this date, and the sum of of expense of diligence, amounting, the said sums, as at this date, to the sum of : THEREFORE I have EXONERED and DISCHARGED, as I hereby not only EXONER and DISCHARGE the said C, his heirs, executors and successors, of the price of the said lands, to the extent of the sums paid to me, extending as aforesaid, and of the foresaid articles of roup, in so far as they relate thereto; BUT ALSO, I do hereby ASSIGN, CONVEY and MAKE OVER  
to

to and in favour of the said C, his heirs and successors, the foresaid sum of                      of principal,                      of penalty, contained in the bond above mentioned, with                      of interest, due on the said principal sum as at this date, and in all time coming; TOGETHER WITH the said bond itself, whole tenor and contents thereof; WITH full power to the said C and his foresaids, to use such diligence on the foresaid bond, by adjudication or otherwise, as he shall think fit, for affecting the said lands and pertinents: BUT DECLARING ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that the bond above assigned, and the whole sums of money thereby due, shall only be used by the said C and his foresaids, as a further security of his purchase of the said lands of                      , but shall noways affect or militate against the person of the said B, or his heirs or successors, or any other estate or effects that do or may pertain to him or them; WHICH ASSIGNATION, under the declaration above written, I OBLIGE me and my foresaids, to WARRANT from my own proper facts and deeds, done or to be done in prejudice hereof; AND I have herewith DELIVERED UP to the said C, the said principal bond, and diligence following thereon at my instance, to be used by him and his foresaids, as their own writs and evidents, to the extent and for the purposes foresaid: AND I CONSENT to  
the

the REGISTRATION hereof, &c. (*in common form, as on p. 208.*)

*General Assignment, by one Brother to another, of all Debts, &c. due to the Cedent by a third Brother deceased; and Disposition of his Right to a House which belonged to the deceased.*

I A, banker in London, for certain onerous causes, do, by these presents, assign and make over to B, my brother, and his heirs and executors, all debts and sums of money whatsoever, principal, interest and expenses, due and addebted to me by the deceased C, merchant in Edinburgh, his and my brother, by bond, bill, account, or any other manner of way; AND particularly, without prejudice to the said generality, a balance of 625l. 16s. 10d. Sterling, which appears to be due to me by the said deceased C, as the result of a variety of transactions and dealings betwixt us, conformably to an account formed by , accountant in Edinburgh, from vouchers in the possession of the said C, at the time of his death; AND all interest, bygone, or to come, due on the said balance; TOGETHER WITH the vouchers and instructions of the said debts, and of the foresaid balance; SURROGATING and SUBSTITUTING the said B, and his forefaids, in my full right and place of the premises, for ever; WITH POWER to  
him

him to ask and receive the said sums and balance from the representatives of the said deceased C, and, if necessary, to charge and pursue therefor, obtain decrees therefor, and put the same to all due and lawful execution; and, on payment, to grant receipts or discharges, or translations, to third parties; compound, transact, and agree the said claims at his pleasure; and, generally, every thing in relation to the premises to do, which I might have done before granting hereof: **AND FURTHER**, I, by these presents, **CONVEY** and **DISPONE** to the said B, his heirs and assignees, all right, title and interest, property or possession, which I, as creditor of the said B, can in any manner of way claim or pretend to the house lying, &c. and which was purchased by the said C from ; **AND** I hereby **DECLARE**, that the said B is and shall be at full liberty to adjudge or evict the said house, acquired by the said C, with the whole privileges and pertinents thereto belonging, for any debts whatever due to me by the said C, as well as for those due to himself; and thereupon to possess and enjoy the said house, and pertinents thereof, undisturbed by me, or by any person deriving right from me, in all time coming; **WHICH ASSIGNATION** and **DISPOSITION** I **BIND** and **OBLIGE** myself to **WARRANT**, **ACQUIT** and **DEFEND** to the said B, and his forefaids, from all facts and deeds, done or to be done by me in prejudice thereof.

**AND**

AND I CONSENT to the REGISTRATION, &c. (*in common form, as on p. 208.*)

*Assignment of a Legacy.*

I A, CONSIDERING that B, by his disposition in favour of C, of date , bequeathed to me the sum of 100l. Sterling, which is thereby declared to be payable against the first Whitfunday or Martinmas after the death of the said B, and to bear interest from that term during the not-payment thereof: AND SEEING that D has made payment to me of the sum of 100l. Sterling, in consideration of my granting this assignation, of which sum I grant the receipt, and renounce all objections in the contrary: THEREFORE, I hereby MAKE and CONSTITUTE the said D, his heirs and assignees, my lawful cessioners and assignees in and to the foresaid legacy of 100l. Sterling, with interest thereof from the term of Whitfunday last, being the term immediately following the death of the said B, and in time coming during the not-payment thereof; ALL as contained in the said disposition by the said B to C, of date foresaid; with all that has or is competent to follow thereon; SURROGATING and SUBSTITUTING the said D, and his forefaids, in my full right and place of the premises (*as in the assignation, p. 208.*)



sum of 5000l. Sterling of principal, to which I have right as one of the younger children of the said marriage, and to the interest of the said sum from this term of Whitsunday , when the same fell due, in terms of the said marriage-contract, and in time coming, during the not-payment thereof, with a fifth part more of the said sum of liquidated penalty incurred through failure; and IN and TO the said marriage-contract, and whole clauses therein contained, in so far as the same relate to the sums above assigned; SURROGATING and SUBSTITUTING the said D, and his forefaids, in my full right and place of the premises; with power to them to call, pursue for, uplift and discharge the sums above assigned; and generally to do every thing in relation to the premises which I might have done before granting hereof: WHICH ASSIGNATION above written, I BIND and OBLIGE me, and my forefaids, to warrant to the said D and his forefaids from all facts and deeds done or to be done by me in prejudice thereof; and I have herewith delivered up to the said D an extract of the forefaid contract of marriage, to be used by him and his forefaids for the purposes above written, as their own proper evident in all time coming. And I CONSENT to the REGISTRATION, &c. (*in common form.*)

*Assignment*

*Assignment of a Gift of Escheat.*

I A, CONSIDERING that our Sovereign Lord the King, by gift dated           , (*narrate the terms of the gift*); AND SEEING that B has made payment to me of           , as the price of the conveyance hereinafter contained, whereof I acknowledge the receipt, renouncing all objections in the contrary: THEREFORE, I have MADE, CONSTITUTED and APPOINTED, as I hereby MAKE, CONSTITUTE and APPOINT the said B, his heirs and donators, my lawful cessioners and assignees, IN and TO the said gift, and all right I thereby have to the whole goods, gear moveable and immoveable, debts, contracts, obligations, and every thing else which belonged to the said C at the time of his forfeiture, and falling under escheat, for the causes above specified, or at any time since; together with all bonds, and other rights and securities made and granted to the said C, or to any of his predecessors to whom he is apparent heir, and falling under escheat; and IN and TO the said gift itself, and all that has or may follow thereon; SURROGATING and SUBSTITUTING the said B and his foresaids in my full right of the premises; with power to them to dispose of the whole goods generally and particularly above mentioned; call and pursue therefor; decrees of declarator and other decrees, to obtain; and generally every other

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thing



thing to do therein that I could do myself before granting hereof: WHICH ASSIGNATION I BIND and OBLIGE me and my foresaids to WARRANT—  
(*from fact and deed in common form.*)

This conveyance is made the ground of a decree of declarator; and is necessary for completing the right of the assignee.

*Assignment of Bonds in the English Form.*

FROM the connexion betwixt the two countries, the Scots conveyancer will be frequently called upon to execute conveyances of English Bonds; and although it ought to be a general rule, to apply, in every case, for the aid of those who are acquainted with English Deeds, wherever property situated in that country is to be transferred, and wherever the deed is to receive effect in England; yet, on this occasion, I shall put down, not as a style to be followed, but in illustration of our own forms, the English Bond, and Conveyance of it.

*Bond after the English Form.*

KNOW all men, by these presents, that we A and B are held, and firmly bound to C, in 1000l. Sterling of lawful money of Great Britain, to be  
paid

paid to the said C, or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made, we bind ourselves, and each of us by himself, our, and either of our heirs, executors and administrators, firmly, by these presents, sealed with our seals this day of \_\_\_\_\_, in the year of our Sovereign Lord George, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, and in the year of our Lord 1800.

The condition of this obligation is such, that if the above bounden A and B, or either of them, their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the above-named C, his executors, administrators or assigns, the full sum of 500l. of lawful money of Great Britain, with lawful interest of the same, on the day of \_\_\_\_\_ next ensuing the date of the above written obligation, then this obligation shall be void, or otherwise remain in full force.

Sealed and delivered, being  
first duly stamped, in  
presence of

D.  
E.

A. *Place of the  
seal.*

B. *Place of the  
seal.*

*Assignment in the English Form.*

THIS INDENTURE, made the \_\_\_\_\_ day of \_\_\_\_\_, in the 40th year of the reign of  
P 3 our

our Sovereign Lord George the Third, by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and in the year of our Lord 1800, between C, of the ONE PART, and D, of the OTHER PART: WHEREAS A and B, by a bond or obligation, bearing date the            day of           , became held and firmly bound unto the said C, in the principal sum of 1000l. Sterling, on the condition therein written, for making void the same, on payment of 500l. of lawful money of Great Britain, with the lawful interest of the same, on the            day of            then next ensuing, as by the said bond, reference being thereunto had, will more fully appear. NOW THIS INDENTURE WITNESSETH, That in consideration of the sum of 500l. of lawful money of Great Britain, to the said C in hand, well and truly paid by the said D, at or before the sealing and delivery hereof; the receipt whereof the said C doth hereby acknowledge; AND for other good causes and considerations, he the said C hath GRANTED, BARGAINED, SOLD, ASSIGNED, TRANSFERRED, and LET OVER, and, by these presents, doth GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, and SET OVER, unto the said D, his executors, administrators and assigns, the said recited bond or obligation and condition, and all things thereby secured and mentioned in the said condition; and all interest now due or to grow due for the same, and all the right, title, interest,

terest, claim and demand whatsoever of him the said C, therein and thereto : AND the said C doth hereby authorise the said D, in his name, to demand, sue for, receive, hold and enjoy the same sum so secured by the said recited bond or obligation, and all interest due and to become due thereon, to and for his and their own use ; AND doth, for himself, his heirs, executors and administrators, COVENANT, PROMISE, GRANT and AGREE to and with the said D, his executors, administrators and assigns, by these presents, that in case the said D, his heirs, executors or administrators, shall not well and truly pay and discharge the said sum of money now due on the said recited bond, pursuant to the condition thereof, then that he the said C, and his heirs, executors, administrators or assigns, shall and will, on default being made in the said payment, well and truly pay, or cause to be paid unto the said D, his executors, administrators or assigns, the said sum of 500l., with legal interest for the same. IN WITNESS WHEREOF, the said C hath hereunto set his hand and seal, the day and date first above written.

C. *Place of the  
Seal,*

Sealed and delivered, be-  
ing first duly stamped, }  
in presence of

E.

F.

P 4

On

On this subject, I shall only add further, two forms of the conveyance of an English debt, taken from the precedents of a very eminent conveyancer.

*Deed of Assignment and Power of Attorney by  
C to D.*

KNOW ALL MEN by these presents, me C :  
WHEREAS B, of the island of Jamaica, by his  
last-will and testament, bearing date the  
1769, and duly proven at the city of New York,  
in North America, on the                      and said  
year, before                      , thereunto delegated and  
appointed, DID GIVE and DEVISE all his estates,  
both real and personal, as well in the island of  
Jamaica, the kingdom of Great Britain, as else-  
where, which he should be possessed of at the  
time of his death, to H, Esq. of                      , in the  
county of Wiltshire; M, Esq. in the county of  
Hampshire; both in the kingdom of Great Bri-  
tain, for the USES and TRUSTS therein mention-  
ed: AND IN PARTICULAR, the said B, by his  
last-will and testament, left to his daughter S,  
the wife of me the said B, the sum of 3000l.  
Sterling, and did thereby constitute and appoint  
his wife N sole executrix of his said will; and  
to the which sum of 3000l. Sterling, so left and  
bequeathed to my said wife, I the said B have the  
only

only good and undoubted right *jure mariti* as the husband of the said S: AND WHEREAS D, my father, has, before the sealing and delivery of these presents, advanced to and for me certain sums of money towards advancing me in the army, and otherwise, to the extent of the said 3000l. Sterling; THEREFORE WIT YE ME to have bargained, sold, assigned, ratified and confirmed, as I, by these presents, BARGAIN, SELL, ASSIGN, RATIFY and CONFIRM unto the said D, his heirs, executors, administrators and assigns, the foresaid sum of 3000l. Sterling, left and bequeathed to my said wife by her said father, by his last-will and testament above recited, with the interest or annualrent that has already fallen due, or may fall due thereupon in time coming, and until payment, and to which I have right *jure mariti*, as said is, together with the said latter-will and testament itself, as far as concerns the said legacy: AND ALSO, I the said C do, by these presents, MAKE, CONSTITUTE, and in my place PUT the said D, my true, lawful, and irrevocable ATTORNEY, in my name and place, to ASK, DEMAND, LEVY, RECOVER and RECEIVE, of and from the said H, and M, and N, the trustees and executors of the before recited last-will and testament, and every of them, and from all other person or persons whatsoever, liable in payment of the said sum of 3000l., with the interest thereof, bygone and in time coming: AND ALSO, I DO hereby  
GIVE

GIVE and GRANT unto the said D, his executors and administrators, and every of them, my full and whole power and authority, in my name, to sue, arrest, imprison, and condemn, and cause to be SUED, ARRESTED, IMPRISONED, and CONDEMNED, the said H, M, and N, and every of them, and all and every other person or persons, liable in payment of the said sum of 3000l. Sterling, and interest thereof; AND ALSO, to procure judgment, and execution to be had against the forenamed persons, their heirs, executors and administrators, and all and every of them, and all and every other person liable for the said sums; AND ALSO, for me and in my name, to RELEASE and ACQUIT the forenamed persons and their forefairs, and every of them, and all others concerned, of the said sums; AND RELEASE or releases, ACQUITTANCE or acquittances, to make, seal, and deliver unto them, and every of them, of the said sum of 3000l., and interest, and of every or any part thereof; AND one attorney or more for the doing of the premises, to MAKE, and the same at his pleasure to REVOKE, and new ones in their place to substitute; AND to do, perform and execute all and singular things which shall be expedient or necessary concerning the premises, as fully as I could do myself if personally present: AND FURTHER, I the said C do, by these presents, GIVE and GRANT unto the said D, his executors and administrators, good and lawful authority

thority to receive, retain, and keep to his and their own proper use and behoof, the said sum of 3000l., and interest, left and bequeathed by the latter-will and testament before recited, without any account to be rendered to me, my executors or administrators, for the same, or any part thereof: And I the said C, for myself, my executors and administrators, and every of them, do, by these presents, COVENANT, PROMISE, and AGREE, to and with the said D, his executors and administrators, and every of them, that I, and my executors and administrators, and every of them, shall and will JUSTIFY, ALLOW, RATIFY, and PERFORM all and whatsoever he the said D, his heirs, executors and administrators, shall lawfully do, or cause to be done, in or about the premises; AND that neither I, my heirs, executors, nor administrators, nor any of them, will REVOKE or MAKE VOID this letter of attorney, nor any authority thereby given to him, the said D; AND that I have not heretofore RELEASED nor MADE VOID the foresaid legacy and bequest of 3000l. Sterling by the foresaid latter-will and testament made and given, nor any part thereof, NOR have done, nor suffered to be done, nor hereafter will do, suffer or assent to be done, any act or acts, thing or things, whereby the said sum of 3000l. in the said testament bequeathed, and interest thereof, may not be recovered, obtained, and had, by the said D, his executors, administrators



strators or assigns, or some of them, according to the true meaning hereof; AND, for the PERFORMANCE of the whole articles, covenants, grants, and agreements herein contained, I, the said C, do, by these presents, BIND myself, my heirs, executors and administrators, and every of them, to the said D, in 4000l., lawful money of Great Britain, to be paid to the said D, his executors and administrators. IN WITNESS WHEREOF, these presents, consisting of this and the three preceding pages of stamped paper, are written by , clerk to ; AND I have hereunto put my hand and seal, AT THE CITY OF EDINBURGH, NORTH BRITAIN, this      day of      , in the year 1772, and in the 12th year of the reign of our Sovereign Lord George the Third, by the grace of God, of Great Britain, France and Ireland, King, &c. Before these witnesses, E and F, both clerks to the said

*C. Place of the  
seal.*

Signed, sealed, and delivered, being first duly stamped, in presence of }

E, witness.

F, witness.

*Assignment of an English Debt in the Scots Form.*

I B, formerly A, widow of B deceased, and one of the two sisters-german, and next in kin  
to

to the deceased A, with the special advice and consent of C, eldest son and heir, and executor of the said deceased B, and I the said C, for myself, for all right and interest I have, or can pretend any manner of way, to the debt after assigned : And we both, with one consent, considering, that L, of London, merchant, by his bond after the English form, signed, sealed, and delivered by him on the \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our Sovereign, &c. and in the year of our Lord, &c. became held and firmly bound to the said deceased A, and his heirs, executors, administrators and assigns, in the principal sum of 2000l., CONDITIONED for payment to the said A, his executors, administrators, or assigns, of the sum of 1000l., good and lawful money of Great Britain, on or before the \_\_\_\_\_ then next ensuing the date of the said bond, together with the lawful interest of the same, after the rate of 5l. per cent. per annum : THAT the said A having died intestate, in London, in the month of December, in the year \_\_\_\_\_, his whole estate devolved upon me, the said B, formerly A, and E, now deceased, his sisters german, and next in kin, and co-heiresses and executors to him : THAT F, the widow of the said A, having taken out letters of administration of her husband's estate and effects, from the Prerogative Court of Canterbury, bearing date \_\_\_\_\_, she, in virtue thereof, entered upon the administration, and having accounted (in so far as she did administer)

administrate) to us, the said B and E, for all the money received by her, conformably to an account fitted and cleared betwixt us and her on the                   ; whereupon we, with consent of the said C, granted her a discharge of her whole intromissions with her husband's estate since his death: IN CONSIDERATION WHEREOF, the said F, the widow of the said deceased A, and administratrix of the said estate and effects, by her assignment, bearing date                   , and registered in the books of Council and Session (office                   ), upon the                   ASSIGNED, TRANSFERRED and SET OVER, to and in favour of me, the said B, and the said E, equally betwixt us, share and share alike, and to our heirs, executors and assigns, sundry debts and sums of money therein mentioned, to which she had right as administratrix of the effects of her said husband, particularly the foresaid sum of 2000l. Sterling, conditioned for payment of the foresaid sum of 1000l., good and lawful money of Great Britain, at the time, and with the interest, as contained in the bond before recited, after the English form, with the said bond itself, and all that might follow thereon: THAT the said deceased E, by her last will, bearing date                   , amongst other things, discharges the said L of the one half of the sums contained in, and due by, the foresaid bond, granted by him to the said A, to which she had right by the assignment above recited: AND NOW, SEEING that G has, in name and behalf of M,  
London,

London, made payment to me, the said C, of the sum of 210l. Sterling, for granting the assignment under written, subject to the condition herein after inserted, whereof I the said C grant the receipt : THEREFORE, I the said B, with the special advice and consent of the said C, have ASSIGNED, TRANSFERRED and MADE OVER, as we, by these presents, with one advice and consent, ASSIGN, TRANSFER and MAKE OVER to the said M, his heirs, executors or assigns, an equal half of the foresaid principal sum of 2000l., conditioned for payment of the foresaid sum of 1000l., good and lawful money of Great Britain, on or before the \_\_\_\_\_, with lawful interest of the same, after \_\_\_\_\_, at the rate of 5 per cent. per annum ; together with the said bond itself, whole tenor and contents thereof, so far as can be extended to the one half of the sums therein mentioned, hereby assigned ; and the letters of administration of the estate of the said A, in favour of the said F, his widow, and assignment by the said F, in favour of me the said B, and E, my sister, whole clauses, tenor and contents of the said writings, and all competent to follow thereupon, in so far as ultimately concerns the one half of the bond hereby assigned ; TURNING and TRANSFERRING the premises from us, our heirs, executors and successors, to and in favour of the said M and his foresaids, whom we hereby SURROGATE and SUBSTITUTE in our full right and place

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place of the premises ; with power to them to uplift and receive, and, if necessary, to call and pursue for the same ; to grant receipts, discharges or assignments, which shall be sufficient to the receivers ; AND in general to do every thing requisite, in relation to the premises, which we, or either of us, could have done ourselves, either jointly or severally, before granting these presents : BUT with this PROVISION, CONDITION and RESTRICTION always, as it is hereby expressly PROVIDED and DECLARED, that in case the said L shall, within the space of two years from the last date hereof, reimburse and pay to the said M, or his forefairs, the sum of 210l. Sterling, now advanced by him for granting hereof, with the interest due thereon, and any expenses he may have incurred in recovering the same ; THEN, and in that case, the said M shall be obliged to accept of the same, in full satisfaction of the large sums and interest hereby transferred, and to discharge the said bond in ample form ; but if the said L shall fail to make such payment, within the said space of two years from the last date hereof, the said G shall be at freedom, and have full liberty and power, to demand and recover the whole sums hereby conveyed ; as freely, in all respects, as if this present condition had not been hereto annexed : AND we BIND and OBLIGE ourselves, conjunctly and severally, to WARRANT these presents, from our own proper facts and deeds, done or to

be done in prejudice hereof : AND we have herewith delivered up the foresaid principal bond, granted by the said L to the said A, and BIND and OBLIGE ourselves, and our foresaids, upon the proper charges of the said M, not only to make up all further title that may be necessary in our persons, for completing full titles to the said bond, but also to deliver up to him, when he shall require the same, an extract or exemplification of the letters of administration in favour of the said F, with an extract of the foresaid assignment, granted by her in favour of me the said B. AND I CONSENT to the REGISTRATION hereof, &c. (*as in page 208.*)

*Assignment in Security, and Back-Bonds.*

This form of security may be applied to a variety of purposes ; as in loans, where a debt is assigned by the debtor in the loan to his creditor, or where it is assigned in relief of an engagement come under by a creditor. In these cases, the assignment will appear to be a simple transmission of the debt for an onerous cause ; and it is in the back-bond only, which the assignee grants, that the nature of the transaction appears.

To the form of the assignation already given, I beg leave to refer ; and shall put down here, such instances only of the back-bond, as may explain this kind of security.

*Back-Bond by an Assignee, to whom an Assignation has been given, in security of a Debt.*

I C, CONSIDERING that A, by his bond, dated , for the causes therein specified, bound and obliged himself, his heirs, executors and successors, to make payment to B, his heirs executors and assignees, of the sum of 500l. Sterling, and that at the term of Martinmas then next, with the sum of 100l. Sterling of liquidate penalty in case of failure, together with the legal interest of the said principal sum from the date of the said bond to the foresaid term of payment, and yearly, termly and continually thereafter, during the not-payment ; AND THAT the said B, by his assignation, dated , made and constituted me, my heirs and assignees, his lawful cessioners and assignees, not only in and to the foresaid principal sum of 500l. Sterling of principal, with 100l. Sterling of liquidate penalty in case of failure, and legal interest of the said principal sum from and after the term of , and

and thereafter during the not-payment, all contained in and due by the bond above recited, but also IN and TO the said bond itself, with all that had or might follow thereon, as the said bond and assignation more fully bear : AND FURTHER CONSIDERING, that although the said assignation proceeds on a narrative of my having paid a full price therefor, yet the truth is, that the same was granted to me in security of the several debts herein after mentioned, due by the said B to me, viz. (*here the debts were enumerated*) ; and it being just and reasonable that I should declare the purposes of the said conveyance, and express the terms on which I am bound to reconvey the same to the said B ; THEREFORE I hereby DECLARE, that the said right stands in my person in security of the said debts due by the said B to me in manner above expressed ; and I BIND and OBLIGE myself, my heirs and successors whomsoever, NOT ONLY to hold just count, reckoning and payment to the said B, and his heirs, executors and assignees, for any part of the said principal sum, annualrents and penalty, so conveyed to me, as I shall recover or uplift, by virtue of the foresaid assignation ; I being always allowed retention of the said debts, principal, interest and expenses, due by the said B to me, and of any expense I may be put to in recovering the debt assigned to me in manner foresaid ; BUT ALSO, on the said B's making payment to me, or my forebears, of the sums





bound and obliged himself, his heirs, executors and successors, to make payment to B, his heirs, executors and assignees, &c. (*here narrate the bond*); and that the said B, by his assignation, of date \_\_\_\_\_, narrating the said bond, and subscribing, that I had advanced and paid to him a certain sum of money, equivalent to the sums thereby conveyed, made and constituted me, my heirs and assignees, his cessioners and assignees, NOT ONLY IN and TO the foresaid principal sum, &c. (*as in the preceding style*); AND SEEING that the said assignation, granted to me by the said B, bears a certain sum of money to have been paid to him, as the onerous cause thereof; YET it is but just that I should acknowledge, as I hereby ACKNOWLEDGE and DECLARE, that I have hitherto made no advance to the said B, and that the said assignation is granted, partly as a trust, for the purpose of enabling me to recover the said debt during the absence of the said B, who is at present about to leave this country, for some time, on a mercantile speculation, AND ALSO IN SECURITY and RELIEF of such sum or sums of money as I may have occasion to advance to the said B, to carry on the trade in which he is at present engaged, before it be possible to recover any part of the said debt; THEREFORE, I hereby BIND and OBLIGE me, my heirs, executors and successors whomsoever, NOT ONLY to hold just count and reckoning with the said B, and his heirs, execu-

tors or assignees, when required, and to make payment to him or them of such part of the fore-said principal sum, interest and liquidate expenses, conveyed to me in manner above written, as I may be able to recover, BUT ALSO, to denude myself, when required, of the said debt, and to retrocess the said B, and his foresaids, in his own right and place of the said debt ; BUT with this PROVISION ALWAYS, that I shall be entitled not only to the reimbursement of any expense I may incur in recovering the said principal sum, interest, and liquidate expenses, to be ascertained by an account thereof, to be made up by me, and taken on my word, but also to repayment of such sum or sums of money as I may happen to advance for the said B, on the faith of the said security, or of such engagements as I may come under on his account, and for his behoof, in any manner of way ; BUT DECLARING, that I am not to be liable for doing diligence for recovery of the said debt, nor for omissions in the trust, of any sort : AND I BIND AND OBLIGE me to perform the premises, under the penalty of 50l. Sterling, over and above performance. AND I CONSENT to the REGISTRATION hereof, &c. (*in common form, as on page 208.*)

*Back.*

*Back-Bond by a Cautioner, to whom Debts were conveyed in Relief of his Engagements.*

I C, CONSIDERING, &c. (*narrate the Bond and assignation*); AND FURTHER CONSIDERING, that the foresaid conveyance in my favour was only granted for my security and relief of a bond, dated , granted by the said B and me, to F, for the sum of 500l. Sterling, payable against the term of Martinmas then next, with a fifth part more of liquidate penalty in case of failure, and interest from the date of the said bond; and which sum was wholly applied to the use of the said B; THEREFORE, whenever the said B shall relieve me of the debt above-mentioned, and of all damage, interest and expense which I may have been put to in consequence of my said obligation, OR whenever I shall recover payment thereof from him, and of all charges and expenses incurred in relation thereto, or to the above-mentioned trust-conveyance, I the said C do hereby BIND and OBLIGE me, my heirs and successors, on the expense of the said B, to denude of the foresaid debt, and to retrocess the said B, his heirs, executors and successors, in their own right and place of the premises; BUT with this PROVISION, that I am not to be liable any further than for my actual intromissions, by virtue of the conveyance aforesaid, and that I am not to be liable in diligence, nor for

omissions of any kind. AND I CONSENT to the REGISTRATION hereof, &c. (as on page 208.)

*Back-Bond by a Disponee, to whom a Disposition had been granted in Security of a Debt; and containing a Power to sell the Subject conveyed by public Roup, in case the Debt be not paid up against a certain Term.*

I A, CONSIDERING that B, by his disposition, dated \_\_\_\_\_, fold and disponed to me, my heirs and assignees whomsoever, heritably and irredeemably, all and whole the lands of \_\_\_\_\_, with all right, title or interest which he had, or could pretend thereto, as the said disposition, containing an obligation to invest the receiver, by a double manner of holding, *a se*, or *de se*, procuratory of resignation, precept of *fasine*, and several other clauses, in itself more fully bears: AND ALSO CONSIDERING, that although the said disposition proceeds on the narrative of my having paid a certain sum of money to the said B, as the price of the lands and others thereby disponed to me; yet, notwithstanding thereof, I hereby declare that I paid no price for the same, nor gave any valuable consideration for the said disposition, further than that the said lands were disponed by the said B to me in security of the several debts after mentioned, due by him to me: And to the end that I might

might dispose thereof in manner herein after specified, in case the following sums of money are not paid to me against the term of Whitsunday next, viz. (*here the grounds of debt will be enumerated*); WHEREFORE I hereby BIND and OBLIGE myself, my heirs and successors, to denude in favour of the said B and his forefairs, of the said disposition and heritable right to the lands and others above-mentioned; and for that purpose to grant, subscribe and deliver, to and in favour of the said B and his forefairs, a formal and valid disposition and conveyance of the said lands and estate, containing procuratory of resignation, precept of fasine, clause of warrandice from facts and deeds, and all other clauses necessary for divesting me of the said lands and estate, and for establishing the same in the person of the said B and his forefairs, under the penalty of 50l. Sterling, over and above performance; BUT under this EXPRESS CONDITION ALWAYS, that the said B, or his forefairs, shall, previous to the term of Whitsunday next, have made payment to me or my forefairs of the several sums of money, principal, interest and penalty, due to me, in manner above written, with any expense I may have incurred in regard to the said debts, or the said conveyance; DECLARING, as it is hereby expressly PROVIDED and DECLARED, that if the sums of money above-mentioned are not paid, at or preceding the said term of Whitsunday next, THEN and in THAT CASE, the full and absolute right of property

property of the lands and estate above-mentioned, shall remain with me and my forefaids ; and it shall be lawful for us to sell the same by public roup, after having advertised the sale thereof in any of the Edinburgh newspapers, three times at least before the day appointed for the roup, and that at any time after the said term of Whitsunday ; it being always understood, that in case the price at which the said lands shall be sold exceeds the sums of money, principal, annualrents and expenses, then due to me, and the expenses attending the sale of the said lands, I and my forefaids shall be bound and obliged to account to the said B, and his forefaids, for the balance of the said price remaining in our hands, after paying the debts above specified, due to me by the said B, and the expense laid out by me in relation thereto, or to the said roup ; without prejudice nevertheless to me, and my forefaids, to use all manner of action and execution, real and personal, against the said B or his forefaids, on the bonds, or other grounds of debt above-mentioned, at any time after the term of Whitsunday next, until we receive payment of the several debts above specified. AND I CONSENT to the REGISTRATION hereof, &c. (*as on page 208.*)

*Back-*

*Back-Bond, declaring a Disposition of an heritable Bond to be in Security of another heritable Bond, narrating a great Variety of Grounds of Debt, and obliging the Assignee to account.*

I, F S, CONSIDERING that the deceased G G, by his heritable bond, bearing date , 1707 years, for the causes therein specified, BOUND and OBLIGED himself, his heirs and successors whatsoever, to content and pay to D S, relict of the deceased A S, and to her heirs and successors, the sum of 5000 merks Scots, at the term of Martinmas then next, with 1000 merks money foresaid, of penalty in case of failure, and annuall-rent of the said principal sum, from the date of the said bond to the foresaid term of payment, and yearly and termly thereafter during the non-payment thereof, at two terms in the year, Candlemas and Lammas, by equal portions, beginning the first term's payment of the said annuall-rent at Lammas then next, for the half year immediately preceding, with 27 merks and a half for each term's failure: And, for the said M S, her further and better security, as well of the said principal sum of 5000 merks as for the yearly payment of the sum of 275 merks, as the annuall-rent then corresponding to the said principal sum, or such as should happen to correspond thereto in any time thereafter, and the said liquidate expenses,



penses, if incurred; the said D G bound and obliged him and his forefaids, to infeft and lease the said M S, her heirs and assignees whomsoever, in ALL and WHOLE (*here the lands were described*), AND THAT by two several infeftments and manners of holding, but under reversion, in manner therein expressed; in virtue of which heritable bond, and precept of sasine therein contained, the said M S was, upon , duly infeft in the forefaid lands and annualrents, and her sasine recorded ; And further, the said M S, with consent of L, her second husband, for his interest, and he for himself, and as taking burden on him for the said M S, by their disposition and assignation, bearing date , for the causes therein specified, assigned and disposed to and in favour of I S, and his heirs and assignees whomsoever, NOT ONLY the forefaid annualrent of 275 merks, or such an annualrent, less or more, as shall by law be answerable or corresponding to the forefaid principal sum of 5000 merks yearly, to be uplifted forth of the lands and others above mentioned; BUT ALSO the forefaid principal sum of 5000 merks, 1000 merks of liquidate expenses, and the whole annualrents of the said principal sum, bygone, resting unpaid, and which might fall due thereafter during the not-payment, with the termly failures due and incurred by virtue of the said heritable bond, with the said heritable bond itself, and instrument of sasine

same following thereon, and all further action and diligence competent to follow thereon, as in the said disposition and assignation at more length is contained ; AND THAT the said I S raised letters of general charge, at his instance, against M G, nephew to the said deceased D G, which are dated and signed                   , 1742, and duly executed, as the same, with the executions thereof, more fully bear : As ALSO, the said I S obtained sentence and decree, at his instance, before the Lords of Council and Session, against the said M G, DECERNING and ORDAINING him, as heir served and retoured to the said deceased D G, his uncle, at least, as lawfully charged to enter heir in general to him, or otherwise representing him upon one or other of the passive titles therein libelled, to make payment to him, the said I S, as having right in manner foresaid, of the foresaid principal sum of 5000 merks, Scots money, contained in the foresaid heritable bond, and of the whole bygone annualrents of the said principal sum, from the date of the said heritable bond, being the                   , 1707 years, and yearly and termly in time coming during the not-payment thereof ; and of the said sum of 1000 merks Scots of liquidate penalty incurred through failure ; and of the said sum of 27 merks and a half for each term's failure in payment of the said bygone annualrents, as the said decree more fully bears : As ALSO, that the said M G, by his personal bond,

bond, of date \_\_\_\_\_, 1735, for the causes therein specified, bound and obliged him, his heirs, executors and successors, to content and pay to the said I S, his heirs, executors or assignees, the sum of 60l. Sterling, at the term of Martinmas then next, with the sum of 12l. Sterling of liquidate expenses in case of failure, together with the due and ordinary annual rent of the said principal sum, from the date of the said bond to the foresaid term of payment, and yearly and termly thereafter during the not-payment thereof, as the said personal bond, registered \_\_\_\_\_, 1741, also more fully bears: THAT upon the said personal bond, the said I S raised letters of horning, at his instance, against the said M G, which are dated \_\_\_\_\_, and signeted \_\_\_\_\_, and are duly executed, denounced and registered; as also, the said B raised letters of inhibition on the said personal bond at his instance, against the said M G, which are dated and signeted \_\_\_\_\_, and duly executed and registered: AND FURTHER, the said I S has raised letters of special charge, at his instance, on the two grounds of debt above narrated, against the said M G, with a view of adjudging the said lands and estate: And CONSIDERING that the said I S, by his disposition and translation, of this date, has sold, alienated and disposed to me, my heirs and assignees, the lands and others above mentioned, conveyed to him in security of the foresaid principal sum, and annual rents

annualrents thereof, originally due to the said M S, with the said principal sum of 5000 merks, and whole bygone annualrents thereof since the date of the said heritable bond, and in time coming during the not-payment, with the said sum of 1000 merks of liquidate expenses, and 27 merks and a half of termly failure: As ALSO, the said I S has thereby likewise transferred to me the foresaid other principal sum of 60l. Sterling, 12l. Sterling of liquidate expenses, and whole annualrents of the said principal sum, bygone and to come, contained in the personal bond above narrated, granted by the said M G to him, together with the said heritable bond and personal bond themselves, with the disposition of the said heritable bond by the said M S to him, and letters of general charge, and decree of constitution obtained thereon; with the letters of horning and inhibition, raised on the said personal bond, and the letters of special charge, raised on both the said bonds, with all that has followed or may follow thereupon, as the said disposition and translation at more length bears: AND SEEING that, although the said disposition doth bear, as the onerous cause thereof, that I have advanced and paid to the said I S, a sum equivalent to the debts and sums of money thereby conveyed to me, YET the truth is, and I hereby acknowledge, that I have not advanced any sum immediately to the said I S, but that the foresaid debts are conveyed to  
me,

me, for my further security and more sure payment of the sum of 500l. Sterling, and bygone interest due thereon, contained in an heritable bond granted by the said I S to me, dated ;  
AND THEREFORE, I hereby BIND and OBLIGE me, my heirs and successors, to impute and allow whatever sum or sums of money I shall recover from the said M G, or any other person, in virtue of the said disposition and translation granted by the said I S to me, IN PAYMENT of the foresaid principal sum, and annualrents thereof, due to me by the said I S, by his heritable bond to me above mentioned ; BUT DEDUCTING always from such sums as I may recover, any expense I may incur in the recovery thereof, and in doing diligence against the said M G, real or personal, according to an account thereof to be exhibited by me, and instructed by my own word alone. AND FURTHER, on the said I S's making payment to me of the said principal sum of 500l. Sterling, and interest due thereon, I BIND and OBLIGE me and my forefaids, whenever we shall be required so to do, to RETROCESS and REPONE the said I S, his heirs or assignees, in their full right and place of the debts conveyed by him to me in manner foresaid ; AND, for that purpose, to MAKE, GRANT, SUBSCRIBE and DELIVER to, and in his or their favour, an ample, valid and sufficient disposition and translation of the premises, with warrandice from fact and deed only ; AND TOGETHER therewith,

I

with, to DELIVER back to him the whole writs and diligences before narrated, now delivered up by him to me, with what other diligences may happen to follow thereupon; the said I S, or his forefaids, always, at one and the same time with my reconveyance, reimbursing me of whatever charges I may happen to have laid out in doing further diligence for recovering or securing the forefaid debts, to be instructed by my account, as aforefaid, and being at the charge of the conveyances necessary for denuding me thereof; BUT DECLARING, that I am not to be liable for omissions, nor obliged to do diligence; and shall be liable only for my actual intromissions, and no further: AND I BIND and OBLIGE me and my forefaids, to fulfil this present backbond, under the penalty of 50l. Sterling, to be paid by me to the said I S, or his forefaids, in case of failure, over and above performance: AND I CONSENT to the REGISTRATION hereof, (*as on p. 208.*)

I next proceed to the intimation of this conveyance, by which the debtor is informed of the transference from the original to the new creditor, and by which a legal transference is made in favour of the assignee.

## INTIMATION OF THE ASSIGNATION.

It is by intimation that the assignation is completed ; and this may be done, either simply, by a marking on the back of the conveyance, in the handwriting of the debtor, or, more formally, by a notorial instrument, or even by letters of supplement. Of these, examples shall be given.

*Intimation, written by the Debtor on the Back of the Assignment.*

Edinburgh, 13th August, 1800. I hold this assignation to be duly intimated to me.

B.

*Intimation, under Form of Instrument, where it is made to the Debtor personally.*

At Edinburgh, and within the dwellinghouse of B, the 13th August, 1800.

Compeared M, as procurator for the within-designed C, whose power is sufficiently known to me, notary public, and to the witnesses subscribing,

ing, and passed with us to the personal presence of A, having and holding in his hands the principal bond within narrated, made and granted by the said A to B, also within designed, with the principal assignation thereto within written; which bond and assignation the said M delivered to me, notary public, to be publicly read over and intimated to the said A; and which being accordingly done in presence of the said A, the said M, procurator foresaid, protested, that the said assignation was duly and legally intimated, and that the said A should be liable in payment of the sums contained in the said bond to the said C, in terms of the said assignation, and should not pretend ignorance thereof; and thereupon took instruments in my hands. THESE THINGS were so done betwixt the hours of twelve noon and one afternoon, place and date foresaid, in presence of N and O, witnesses to the premises, specially called and required.

*Quæ attestor,*

F—, N. P.

N. witness.

O. witness.

*Intimation under Form of Instrument, when it is made to the Debtor at his Dwellingplace.*

WHERE the intimation cannot be made personally, a schedule must be left for the debtor



at his dwellingplace. The schedule is in these terms.

*Schedule of Protest.*

I M, as procurator for C, holding in my hands the principal bond, of date , granted by you to B ; whereby, for the causes therein specified, you bound and obliged yourself, your heirs and successors, to pay to B, his heirs, executors or assignees, the sum of 500l. Sterling, and that against the term of , with 100l. Sterling of liquidate penalty, and interest of the said principal sum from the said date, and in time coming, during the not-payment of the said principal sum, as the same more fully bears ; AND ALSO HOLDING in my hands an assignation to the said bond by the said B, in favour of C, his heirs, executors and assignees, of date , as the same also more fully bears, I DELIVERED the same to F, notary public, to be publicly read over and intimated ; and which being accordingly done, I, as procurator foresaid, PROTESTED, and hereby PROTEST, that the said assignation shall be held as duly and legally intimated, and that you and your forefairs shall be liable in payment of the sums of money above assigned, in terms of the said assignation, and that you shall not pretend ignorance of the said assignation, or intimation thereof.

THIS

THIS I do, at Edinburgh, the 13th day of August 1800, betwixt the hours of        and        ; and thereupon I take instruments in the hands of F, notary public, and require you, R and S, to be witnesses to the whole premises.

M, Pror.

F—, N. P.

*Instrument of Intimation written on the Back of  
the Assignment.*

AT EDINBURGH, and within the dwellinghouse of A, the 13th day of August 1800, COMPEARED M, as procurator for the within designed C, whose power was sufficiently known to me notary public, and to the witnesses subscribing, AND PASSED with me to the dwellinghouse of the said A, HAVING and HOLDING in his hands the principal bond within narrated, made and granted by the said A to the within designed B, with the principal assignation thereto, granted by the said B within written, to the said C, his heirs, executors and assignees, of the date, tenor, and contents within mentioned—(*If the instrument be written on a separate paper, the bond and assignation must be narrated in the same manner as in the schedule of protest* :)—Which bond and assignation the said M. DELIVERED to me, notary public, to be publicly read and intimated ; and which I accordingly did : When the said M, as procurator foresaid,

PROTESTED, that the said assignation was duly and legally intimated, and that the said A should be liable in payment of the sums of money above assigned, and that he might not pretend ignorance of the said assignation, or intimation thereof ; and thereupon he took instruments in my hands : Of all which I left a schedule for the said A, at his dwellinghouse, with his servant, because I could not find himself personally. THESE THINGS were done within the dwellinghouse of the said A, betwixt the hours of one and two afternoon of the day, month and year first above written, in presence of R and S, witnesses to the premises specially called and required.

*Quæ attestor,*

F—, N. P.

R. Witnefs.

S. Witnefs.

*Intimation where the Debtor is out of the Kingdom.*

This intimation is made in virtue of letters of supplement, which pass on a bill ; and no warrant is required to be produced with the bill.

*Bill for Letters of Supplement.*

MY LORDS of COUNCIL and SESSION, UNTO  
your Lordships HUMBLY MEANS and SHOWS YOUR  
SERVITOR

**SERVITOR C** ; **THAT** where **A**, by his bond, of date \_\_\_\_\_, bound and obliged himself, his heirs, executors and successors, to pay to **B**, his heirs, executors or assignees, the sum of 500*l.* Sterling against the term of Martinmas then next, with 100*l.* Sterling of liquidate penalty in case of failure, and the legal interest of the said principal sum, from the date of the said bond until the fore-said term of payment, and thereafter during the not-payment thereof : And the said **B**, by his assignation, of date \_\_\_\_\_, for the causes therein specified, made, constituted and appointed the said **C**, his heirs and assignees, his irrevocable cessioners and assignees, in and to the said principal sum, interest thereof from and after the term of \_\_\_\_\_, and the said liquidate penalty, in case of not punctual payment thereof, all contained in the said bond ; and in and to the said bond itself, with all that has or is competent to follow thereon, as the said bond and assignation in themselves more fully bear : That the complainer intends to complete the assignation above narrated, by intimating the same to **A**, to the end that he may be certiorated of his right to the said debt, and thereby put *in mala fide* to pay the same to any other person ; But the said **A** being at present out of the kingdom, so that the said assignation cannot be intimated to him personally, or at his dwellingplace ; **THEREFORE**, necessary it is for the complainer to have letters of supplement in the premises.

Therefore I beseech your Lordships for letters of supplement in the premises, and containing a warrant for citing the said A, as forth of the kingdom, in common form.

ACCORDING TO JUSTICE, &c.

M. N.'s Bill.

This bill is presented, without any warrant, to the Clerk to the Bills, who writes on it, '*Edinburgh, 13th August, 1800, Fiat ut petitur;*' and marks it with his subscription. It is then laid before the Lord Ordinary on the Bills, by whom the above warrant is subscribed; and it then becomes a full authority for the letters; which are in these terms,

*Letters of Supplement.*

GEORGE, by the grace of God, King of Great Britain, France and Ireland, Defender of the Faith; To

MESSENGERS at arms, our Sheriffs in that part, jointly and severally, specially constituted, greeting: WHEREAS it is humbly meant and shown to us by OUR LOVING C, THAT where A, by his bond, of date , &c.—(*here narrate the bond and assignation as in the bill*)—THAT the complainer intends to complete the said assignation, by intimating the same to the said A,

to

to the end that he may be certiorated of the complainer's right to the said debt, and be thereby put *in mala fide* to pay the same to any other person. But in regard the said A is presently forth of Scotland, so that the said assignation cannot be intimated to him personally, or at his dwellingplace; THEREFORE, necessary it is for the complainer to have these our letters directed at his instance, in manner, and to the effect underwritten, as is alleged. OUR WILL IS HEREOF, and we charge you, that ye pass, with the said complainer, or a procurator or attorney in his name, and with a notary-public and witnesses, to the market cross of Edinburgh, and pier and shore of Leith, respectively and successively after others; and, at each of these places, after using the legal solemnities, that ye, in our name and authority, make due and lawful intimation of the said bond and assignation to the said A—(*if there be more than one debtor, say,* 'To the said A, B and C, or to such of them as are forth of Scotland for the time')—and all others concerned, or liable in payment of the sums thereby assigned; AND PROTEST, that they may not pretend ignorance thereof, nor make payment of the sums assigned to any other person or persons than the complainer; WITH CERTIFICATION to him, if he does in the contrary, he shall not only be liable to the complainer in repetition of the sums of money, principal, interest and penalty, contained in the said bond and assignation, and also

so

so in damages and expenses; AND upon all and fundry the premises, to ask and take instruments in the hands of the said notary-public. ACCORDING TO JUSTICE, as ye will answer to us thereupon; WHICH TO DO we commit to you, jointly and severally, our full power, by these our letters, delivering them by you, duly executed and indorsed, again to the bearer. GIVEN under our signet, AT EDINBURGH, the thirteenth day of August, and 40th year of our reign, 1800.

*Ex deliberatione Dominorum Concilii.*

Signed by a writer to the signet.

Signeted 14th August,  
1800.

*Execution of the Letters.*

Three copies are made of the supplement to the will; and to the copies are subjoined the following citation by the messenger. The messenger, as appears from the execution, is accompanied by an attorney for the assigner, and a notary-public. The terms of the execution will sufficiently explain the form of proceeding.

*Copy*

*Copy of Citation.*

I A G, messenger at arms, by virtue of letters of supplement (whereof the foregoing is a full double to the will), dated the 13th, and signeted the 14th days of August current, at the instance of C D, merchant in A, complainer, do hereby, in his Majesty's name and authority, make due and lawful intimation of the bond and assignation therein narrated, to you A F esquire of B (as being furth of Scotland); AND PROTEST, that you may not pretend ignorance thereof, nor make payment of the sums assigned to any other person or persons, than the complainer; with certification to you, if you do on the contrary, you shall not only be liable to the complainer in repetition of the sums of money, principal, interest and penalty, contained in the said bond and assignation, but also in damages and expenses; and upon all and sundry the premises, I, and J G writer in Edinburgh, as procurator for and in name of the said complainer, severally ask and take instruments in the hands of I N, notary public. This I do, upon the fourteenth day of August, one thousand eight hundred years, before these witnesses, G R, and W S, indwellers in Edinburgh.

*Form*



*Form of the Execution.*

Upon the fourteenth day of August 1800, I A G, messenger at arms, by virtue of the within written letters of supplement, at the instance of the within-designed C, passed, with the procurator and attorney, and with the notary-public and witnesses, all after named, to the market cross of Edinburgh, pier and shore of Leith, respectively and successively after others; and at each of the said three places, after my crying of three several Oyeses, open proclamation, and publicly reading the said letters, and the bond and assignation within narrated, and which I also held in my hand, in his Majesty's name and authority, I made due and lawful intimation of the said bond and assignation to the also within designed A, as being furth of Scotland, and protested, that he might not pretend ignorance of the said assignation, nor make payment of the sums thereby assigned to any person or persons, but allenarly to the said complain-er; and I made certification as within directed. This I did, conform to the said letters in all points; a full double whereof to the will, with a just copy of intimation, to the effect above expressed, there-to subjoined, I affixed and left for the said A, at and upon each of the said market-cross and pier and shore respectively, after using the solemnities aforesaid; and upon all and sundry the premises,  
and

and at each of the said three places, I and P, as procurator and attorney for, and in name and behalf of the said complainer, severally asked and took instruments in the hands of L M, Not. Pub. And the said whole copies were signed by the said procurator and attorney, and notary-public and me ; did bear the date thereof ; date and signet-  
ing of the said letters ; with the names and designations of the witnesses following. ALL THESE things were so done as aforesaid, before these witnesses, N and O, specially called and required to the premises.

A G. Messr.

L M—, N. P.

N, Witness.

O, Witness.

This closes the form of the Assignment.

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### TRANSLATION.

The term *translation*, as I have already observed, is applied to the deed, by which an assignee carries forward the right to a new creditor ; but if the right were to proceed another step, the deed would be termed a conveyance  
or

*Form of the Executio*

Upon the fourteenth day  
A G, messenger at arms, by  
written letters of sup  
within-designed C, p  
attorney, and with th  
all after named, to t  
pier and shore of  
sively after others  
places, after my  
open proclam  
letters, and  
rated, and  
Majesty  
lawful  
to th  
Sc  
t  
in my favour, of date  
the same date to the said A, as the said bond and  
assignment themselves more fully bear : AND NOW  
SEEING that D, in consideration of my granting  
these presents, has made payment to me of a sum  
of money equivalent to the sums hereby conveyed,  
(or the precise sum may be expressed), whereof I  
hereby acknowledge the receipt : THEREFORE, I  
have TRANSFERRED and MADE OVER, as I here-  
by TRANSFER, CONVEY, and MAKE OVER, to  
and

of the said three places, I and P, as  
attorney for, and in name and be-  
a companion, heretofore acted and  
the bonds of L. M., No. Pub.  
were signed by the said  
and were public and

the due and  
principal sum, from

then last to the said term

yearly and continually thereafter

not-payment of the said principal sum :

HIGH BOND, and sums of money thereby due,

I have now right from the said B, by assignment

in my favour, of date , and intimated of

the same date to the said A, as the said bond and

assignment themselves more fully bear : AND NOW

SEEING that D, in consideration of my granting

these presents, has made payment to me of a sum

of money equivalent to the sums hereby conveyed,

(or the precise sum may be expressed), whereof I

hereby acknowledge the receipt : THEREFORE, I

have TRANSFERRED and MADE OVER, as I here-

by TRANSFER, CONVEY, and MAKE OVER, to

and

VOUE of the said D, his heirs, executors  
's, the foresaid sum of 500l. Sterling,  
of liquidate penalty, with the legal  
aid principal sum remaining due  
, and in time coming  
ent thereof, all contained in,  
above narrated; together  
signation thereof in my  
he whole tenor and  
has followed or may  
ING and SUBSTI-  
as forefaids, in my full  
the premises; WITH POWER to  
to ask for and uplift the sums of  
, principal, interest and penalty, hereby  
conveyed; and, on receiving payment, to grant  
discharges, or conveyances thereof, either in whole  
or in part; AND GENERALLY every other thing  
to do in the premises which I might have done  
myself before granting hereof; WHICH CONVEY-  
ANCE above written, I BIND and OBLIGE myself  
and my forefaids to WARRANT to the said D and  
his forefaids, from all facts and deeds, done or  
to be done by me in prejudice hereof; AND I  
have herewith DELIVERED UP the said principal  
bond and assignation to the said D, to be used by  
him and his forefaids as their own proper writs  
and evidents in all time coming: AND I CON-  
SENT to the REGISTRATION hereof in the books  
of Council and Session, or in other Judges' books  
competent,

ASSIGNATIONS.  
said three places, I and  
for, and in name and be-  
severally asked and  
M, Not. Pub.  
the said  
and

or disposition. The style of the translation will be found to differ from that of the assignation.

*Translation.*

I C, CONSIDERING that A, by his bond, of date , bound and obliged him, his heirs, executors, and successors, to have paid to B, his heirs executors, or assignees, the sum of 500l. Sterling of principal, and that against Martinmas then next, with 100l. Sterling of liquidate penalty in case of failure ; together also with the due and ordinary interest of the said principal sum, from the term of Whitsunday then last to the said term of payment, and yearly and continually thereafter during the not-payment of the said principal sum : TO WHICH BOND, and sums of money thereby due, I have now right from the said B, by assignation in my favour, of date , and intimated of the same date to the said A, as the said bond and assignation themselves more fully bear : AND NOW SEEING that D, in consideration of my granting these presents, has made payment to me of a sum of money equivalent to the sums hereby conveyed, (*or the precise sum may be expressed*), whereof I hereby acknowledge the receipt : THEREFORE, I have TRANSFERRED and MADE OVER, as I hereby TRANSFER, CONVEY, and MAKE OVER, to  
and

and in favour of the said D, his heirs, executors and assignees, the foresaid sum of 500l. Sterling, 100l. Sterling of liquidate penalty, with the legal interest of the said principal sum remaining due since the term of \_\_\_\_\_, and in time coming during the not-payment thereof, all contained in, and due by, the bond above narrated; together with the said bond and assignation thereof in my favour, themselves, with the whole tenor and contents thereof, and all that has followed or may follow thereupon; SURROGATING and SUBSTITUTING the said D and his foresaids, in my full right and place of the premises; WITH POWER to him or them to ask for and uplift the sums of money, principal, interest and penalty, hereby conveyed; and, on receiving payment, to grant discharges, or conveyances thereof, either in whole or in part; AND GENERALLY every other thing to do in the premises which I might have done myself before granting hereof; WHICH CONVEYANCE above written, I BIND and OBLIGE myself and my foresaids to WARRANT to the said D and his foresaids, from all facts and deeds, done or to be done by me in prejudice hereof; AND I have herewith DELIVERED UP the said principal bond and assignation to the said D, to be used by him and his foresaids as their own proper writs and evidents in all time coming: AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or in other Judges' books competent,

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competent, therein to remain for preservation;  
and that all execution necessary may follow on a  
decree to be interponed hereto in common form;  
and, for that purpose, I constitute

## MY PROCURATORS,

**&c. In witness whereof, &c.**

## RETROCESSION.

THE Retrocession, as the name implies, is the giving back of the right conveyed, to the person from whom it originally came. In general, it is a form of deed that will occur only in trusts, though, no doubt, it may happen that the assignee may purchase back a right which he has transferred. The difference is immaterial ; and I have only to remark, in regard to the Translation and Retrocession, that they are completed by intimation, in the same way with the Assignment itself.

### *Form of the Retrocession.*

I C, CONSIDERING that A, by his bond, dated  
*(here the bond and assignation  
will be narrated as in the preceding example);*  
AND SEEING that my name was inserted in the  
I said

faid assignation, on an understanding betwixt the faid B and me, that I should denude in his favour, whenever I should be required so to do ; THEREFORE I, at his request, have REPONED, RESTORED, and RETROCESSED, as I, by these presents, REPONE, RESTORE, and RETROCESS the faid C, his heirs, executors and assignees, IN and TO his own right and place of the foresaid principal sum of 500l. Sterling, interest and penalty, contained in the faid bond above narrated, as fully and freely in all respects as if the faid assignation had never been made ; AND IN and TO the faid bond and assignations themselves, with all that has followed or may follow thereupon ; SURROGATING and SUBSTITUTING, &c. (*as in the preceding example.*)

This includes all I have to observe in regard to the form of the simple Assignation, or of the Translation and Retrocession ; and I now proceed to the Forms by which personal Obligation is discharged.



## CHAP. III. OF DISCHARGES.

IN arranging the Discharge of personal Obligations, the order I mean to observe is, 1. To give examples of Discharges of Interest, and of Termly Payments ;—2. Of the Discharge of the Bond ;—and, lastly, Of other Obligations and Grounds of Debt.

## I. DISCHARGES OF INTEREST AND TERMLY PAYMENTS.

*Discharges of Interest.*

DISCHARGES of Interest, and of Termly Payments, are now written upon stamps, as required by law ; but they do not require, nor is it usual, to insert a clause of registration in them : at the same time, the debtor may, no doubt, insert one, if he chuses.

*A Discharge of Interest, written by the Creditor.*

I B, grant me to have received from A the sum of TWENTY-FIVE POUNDS STERLING, as one  
year's

year's interest from the term of Whitsunday 1799 to the term of Whitsunday last, of the principal sum of 500l. Sterling, contained in a bond granted by the said A to me, dated           ; OF WHICH year's interest I hereby DISCHARGE the said A, his heirs, executors and successors whomsoever. IN WITNESS WHEREOF, I have written and subscribed these presents, on a proper stamp, at Edinburgh, the 22d August, 1800. B.

*Discharge of Interest, when it is written by another than the Creditor.*

The only difference is in the testing clause, which is thus expressed: "IN WITNESS WHEREOF, I have subscribed these presents (written on a proper stamp, by C, writer in Edinburgh), AT EDINBURGH, the 22d August, 1800, in presence of D, my servant, and the said C, writer hereof."

C, witness.

B.

D, witness.

*Discharge of Interest by a Wife.*

I B, wife of C, with the special advice and consent of the said C, and I the said C, for myself, and as taking burden on me for my said wife; and we both, with one consent, hereby grant us to have received from A the sum of 25l. Ster-

ling, as one year's interest from Whitsunday 1799  
to Whitsunday last, of the sum of 500l. Sterling,  
contained in a bond granted by the said A to me,  
the said B, dated                      ; OF WHICH year's  
interest, we, with one consent, and I, the said C,  
as taking burden on me for my said spouse, here-  
by DISCHARGE the said A, his heirs, executors  
and successors whomsoever. IN WITNESS WHERE-  
OF, &c.

### *Discharge by a Factor.*

I C, factor appointed by B, agreeably to factory in my favour, dated \_\_\_\_\_, and registered \_\_\_\_\_, whereby I am authorised to receive and discharge all sums of money due to the said B, by bond or otherwise, grant me to have received from A the sum of 25l. Sterling (*as in the preceding example*); OF WHICH year's interest I hereby DISCHARGE the said A, his heirs, executors and successors whomsoever; AND I OBLIGE my said constituent, his heirs, executors and successors, TO WARRANT this discharge to the said A, and his forefairs, at all hands, as law will. AND I FURTHER OBLIGE my said constituent to make forthcoming to the said A an extract of the said factory in my favour, when required. IN WITNESS WHEREOF, &c.

## Discharge

*Discharge by an Assignee.*

I C, grant me to have received from A the sum of 25l. Sterling, as one year's interest, &c. from Whitfunday 1799 to Whitfunday last, of 500l. Sterling, contained in a bond dated , granted by the said A to B; which bond, and the sums therein contained, were assigned to me by the said B, by assignation, dated , of which year's interest, I hereby DISCHARGE the said A, his heirs, executors and successors whomsoever. IN WITNESS WHEREOF, &c.

*Discharge by a Tutor.*

I D, tutor-dative appointed to C, by letters of tutory under the Quarter Seal in my favour, dated , grant me to have received from A the sum of 25l. Sterling, as one year's interest from Whitfunday 1799 to Whitfunday last, of the principal sum of 500l. Sterling, contained in a bond granted by the said A to the deceased B, father to the said C, dated , to which C has right by disposition and settlement executed by his said father, of date ; whereby the said bond, and sums thereby due, is, amongst others, specially conveyed to the said C; OF WHICH year's interest I, as tutor foresaid; and as taking burden on me for my said pupil, DIS-

CHARGE the said A, his heirs, executors and successors whomsoever. IN WITNESS WHEREOF, &c.

*Another Form of this Discharge.*

• We D, E, and F, tutors nominated and appointed to C, agreeably to nomination of tutors and curators, contained in a settlement of his estate, executed by A, father of the said C, dated \_\_\_\_\_, and recorded \_\_\_\_\_, acknowledge us to have received from A, by the hands of F, one of our number, the sum of 25l. Sterling, &c.

*Discharge by a Minor, with Consent of his Curators.*

I C, with the special advice and consent of D, E, and F, curators nominated and appointed to me by B, my father, by deed of nomination, of date \_\_\_\_\_, grant me to have received from A the sum of 25l. Sterling, &c. &c.; of which year's interest I, with consent foresaid, hereby discharge the said A, his heirs, executors and successors whomsoever. IN WITNESS WHEREOF, &c.

*Discharge*

*Discharge by an Executor confirmed.*

I C, executor nominated and confirmed (or executor decerned and confirmed) to the deceased B, by the confirmed testament in my favour, expedited before the commissary of \_\_\_\_\_, on the \_\_\_\_\_, grant me to have received from A the sum of 25l. Sterling, &c. &c.; OF WHICH year's interest, I hereby discharge the said A, his heirs, executors and successors whomsoever. IN WITNESS WHEREOF, &c.

*Or when the Executor has not been confirmed.*

I C, only child and executor *qua* nearest in kin of the deceased B, grant me to have received from A the sum of 25l. Sterling, &c. &c.; OF WHICH year's interest I hereby discharge the said A, his heirs, executors and successors whomsoever. IN WITNESS, &c. (*or, if the debtor be not satisfied with the discharge by the next of kin unconfirmed, the following clause may be added*): AND in regard I have not hitherto expedited a confirmation, as executor to the said A, THEREFORE, in case the said A shall require it; I BIND and OBLIGE me to obtain myself decerned and confirmed executor-dative *qua* nearest in kin to the said B, my father, and that within six months from this date, un-

der the penalty of 25l. Sterling, to be paid to the said A in case of non-performance. IN WITNESS WHEREOF, &c.

*Discharge by an Heir where the Bond excludes Executors.*

I C, heir in general served and retoured to the deceased B, my father, by general service, exped before , on the , and duly retoured to Chancery, GRANT me to have received from A, the sum of 25l. Sterling, as one year's interest from Whitsunday 1799 to Whitsunday last, of 500l. Sterling of principal, contained in a bond granted by the said A to the said deceased B, my father, and his heirs, secluding executors, dated ; OF WHICH year's interest I hereby DISCHARGE the said A, his heirs, executors and successors whomsoever. IN WITNESS WHEREOF, &c.

*Discharge of an Annuity.*

I B, grant me to have received from A the sum of 20l. Sterling, as one half year's annuity, from Martinmas to Whitsunday last, contained in a bond of annuity granted by the said A to me, bearing date ; OF WHICH half year's annuity

annuity I hereby DISCHARGE the said A, his heirs,  
executors and successors whomsoever. IN WIT-  
NESS WHEREOF, &c.

*Discharge of Annuities by an Executor of the Annuitant.*

I C, executor-dative *qua* nearest in kin decern-  
ed and confirmed to the deceased B, GRANT me  
to have received from A the sum of 20l. Sterling,  
in full and complete payment of the annuity due  
by the said A to the said B at the time of his  
death, in virtue of a bond of annuity, granted by  
the said A to the said B, dated ; OF  
WHICH sum, \* and of the whole annuities, interest  
and penalties, contained in the said bond, and of  
the said bond of annuity itself, and all that has  
or can follow thereon, I, as executor foresaid, do  
hereby DISCHARGE the said A, his heirs, exe-  
cutors and successors whomsoever ; WHICH DIS-  
CHARGE I oblige me to WARRANT at all hands.  
AND having herewith delivered up the said bond  
of annuity to the said A, to be used by him at  
pleasure, I CONSENT to the REGISTRATION here-  
of

\* This, as being a general discharge, will require a stamp proper for such discharges ; for the acts make a distinction betwixt the discharge of a certain sum and a general discharge.



of in the books of Council and Session, or other Judges' books competent, therein to remain for preservation ; and, for that purpose, CONSTITUTE  
MY PRO-  
CURATORS, &c. In witness whereof, &c.

*Discharge of a Jointure.*

I B, relict of A, grant me to have received from C, eldest son and heir of the deceased A, as representing his said father, the sum of 200l. Sterling, as one half year's jointure, due and payable to me at Whitfunday last, for the half year from that term to Martinmas next, in virtue of a contract of marriage entered into betwixt the said deceased A, my husband, and me, bearing date  
; OF WHICH half year's jointure the said C, and all concerned, are hereby DISCHARGED.  
IN WITNESS WHEREOF, &c.

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2. DISCHARGE OF THE BOND.

*Discharge written on the back of the Bond.*

I the within-designed B, GRANT me to have received payment from the also within-designed  
A,

A, of the within principal sum of 500l. Sterling, and interest thereof, from Whitsunday 1799 to this date (all prior interests having been formerly paid up), amounting, in whole, to the sum of 525l. Sterling, whereof I hereby acknowledge the receipt; THEREFORE, I hereby EXONER, ACQUIT, and fully DISCHARGE the said A, his heirs, executors and successors, of the within principal sum of 500l. Sterling, and whole interest due thereon; together with the said sum of 100l. Sterling of liquidate penalty, all contained in and due by the within bond, AND of the said BOND itself, with the whole clauses and obligations therein contained, and all that has followed or may follow thereon: AND I hereby BIND and OBLIGE me, my heirs, executors and successors, TO WARRANT this discharge at all hands, and against all deadly, as law will. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or others competent, therein to remain for preservation; and, for that purpose, I CONSTITUTE

my procurators,  
&c. IN WITNESS WHEREOF, these presents, written by C, on the back of the said bond, are subscribed by me at Edinburgh, the 15th day of May 1800, before these witnesses, D, and the said C.

B.

C, witness.

D, witness.

*Discharge*



preceding that term having been paid up and discharged), and of the sum of                      Sterling, as the expense incurred by me in raising and executing the said diligence, to which I have restricted the penalty stipulated in the said bond, amounting, in whole, to the sum of                      Sterling, whereof I hereby grant the receipt ; THEREFORE I have exonerated and discharged, as I hereby EXONER, ACQUIT and DISCHARGE the said A, his heirs, executors and successors, of the foresaid principal sum of 500l. Sterling, interest due thereon, and liquidate expenses incurred through failure, AND of the said bond itself, letters of horning and caption, executions thereof, whole tenor and contents of the same, and all that has followed or may follow thereupon : WHICH DISCHARGE I BIND and OBLIGE me, my heirs, executors and successors, to WARRANT to be good, valid and sufficient to the said A, and his foresaids, at all hands, and against all deadly, as law will. AND, having herewith delivered up to the said A an extract of the foresaid bond, with the letters of horning and caption, and executions thereof, to be used by him at pleasure, I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation : And, for that purpose, CONSTITUTE

MY PROCURATORS, &c. In witness whereof, &c.

*Discharge*

*Discharge of a Bond, by the Executor-Dative of the Assignee to the Bond, on which Diligence had followed, and an Adjudication been raised against the Estate of the Debtor.*

I, R M, CONSIDERING that H J, by his bond, bearing date , (for the causes therein specified), bound and obliged him, his heirs, executors and successors, to pay to R. M'K., his heirs and assignees whomsoever (secluding his executors), the sum of 1000l. Sterling against the term of Whitsunday , with 200l. Sterling of liquidate expense in case of failure, and interest of the said principal sum, from the term of Whitsunday to the said term of payment, and thereafter during the not-payment thereof, as the said bond, registered , more fully bears ; IN and TO which bond, and sums of money therein contained, the said R. M'K., by his assignation, of date , for the causes therein specified, made and constituted the now deceased H M, my brother, his heirs or assignees, his cessioner and assignee ; AND to which bond and sums of money, principal and interest thereof, at the time of the said H M's death, with the liquidate expenses above specified, I acquired right as executor-dative *qua* nearest in kin DECERNED and CONFIRMED to him before the Commissaries of Edinburgh, agreeably to the confirmed testament,

ment, of date , in which the said debt is given up and confirmed ; AND upon which bond I raised letters of horning, at my instance, against the said H J, which are dated and signetted ; in virtue whereof he was lawfully charged, as by execution, of date ; and in virtue of which letters, containing a warrant of arrestment, I caused arrest the funds of the said H J in the hands of W F ; as also, I raised letters of caption against the said H J, and brought a summons of adjudication, at my instance, against him, dated and signetted , and executed against him the , as the said diligences, and executions thereof, in themselves more fully bear. AND NOW SEEING that the said H J has made payment to me of the foresaid principal sum of 1000l. Sterling, with the sum of 125l. Sterling as the interest thereof since the term of , all preceding interest having formerly been paid up ; as also of the sum of 9l. 2s. 6d. Sterling as the expense of the said diligence, amounting, in whole, to the sum of 1134l. 2s. 6d. Sterling, whereof I hereby acknowledge the receipt : THEREFORE, I have EXONERED and DISCHARGED, as I hereby EXONER, ACQUIT, and DISCHARGE the said H J, his heirs, executors and successors whomsoever, of the foresaid principal sum of 1000l. Sterling, interest due thereon, and liquidate penalty incurred through failure ; AND of the said bond itself, letters of horning and caption

tion raised thereon, executions and registrations thereof, and of the said arrestment laid on in the hands of the said W F, by virtue of the said letters of horning, and of the foresaid summons of adjudication, and of all further action, diligence, and execution, competent to me upon the premises: WHICH DISCHARGE I BIND and OBLIGE me, my heirs, executors and successors, to warrant to the said H J and his foresaids, at all hands, and against all deadly, as law will; AND I have herewith DELIVERED UP to the said H J an extract of the said bond, the said assignation, confirmed testament, letters of horning and executions of arrestment, and the said summons of adjudication, to be cancelled and otherwise disposed of by him at his pleasure. AND I CONSENT to the REGISTRATION hereof, &c. (as on page 285.)

*Discharge by an Assignee of a Bond and Decree on the passive Titles to the Heir of the original Debtor, on a Composition paid by the Factor for the Trustees of the original Debtor.*

I, H R, assignee to the debt hereby discharged, CONSIDERING that the deceased D, by his bond, dated , and registered , for the causes therein specified, bound and obliged him, his heirs, executors and successors, to pay to the also deceased H R, my father, his heirs, execu-  
tors

tors or assignees, the sum of 900l. Sterling at the term of . . . , with 180l. Sterling of liquidated expenses in case of failure, together with the legal interest of the said principal sum, from the date of the said bond to the said term of payment, and thereafter during the not-payment thereof; AND THAT a process before the Court of Session was raised by A R, my immediate elder brother, as executor decerned and confirmed *qua* nearest in kin to the said H R my father, before the Commissary of the commissariat of . . . ; which action was first brought against the now deceased F, as representing *passive* the said deceased D, his eldest brother, and was, upon the death of the said F, transferred against J, his eldest son; in which process the Lords found the said J *passive* liable for the foresaid debts, to the extent of the said F's intromissions with the rents of . . . ; and therefore, decerned and ordained the said J to make payment to the said A R of the foresaid principal sum of 900l., 180l. of penalty, and of the interest of the said principal sum from the term of . . . , as the said decree, of date . . . , bears: To which bond and sums of money, principal, interest, and liquidated penalty, and decree on the passive titles obtained therefor, with the said confirmed testament, I have now right from the said A R, by assignation from him in my favour, bearing date . . . : AND FURTHER, considering that the intromission of the . . .

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faid F with the rents of the faid , (which intromission was the ground of the faid decree), did not amount to the faid debt ; AND NOW SEEING that J M, as factor for A F, J G, and J S, being the accepting trustees of the deceased F, and who, by his settlement, are burdened with the payment of his debts, has made payment to me of a composition of 800l. Sterling in full of the faid debt, whereof I hereby acknowledge the receipt ; which sum I, as having right in manner foresaid, and from the shortcoming of the faid F's intromissions, do hereby accept of in full satisfaction and payment of the faid debt, principal, interest, and penalty, as contained in the faid bond, and decree obtained thereupon : THEREFORE, I hereby EXONER, ACQUIT and DISCHARGE the faid J, and his heirs, executors and successors, and the whole heirs, executors and successors of the faid deceased F, and the faid trustees, and all others concerned, of the foresaid principal sum of 900l. Sterling, 180l. Sterling of liquidated penalty, and interest of the faid principal sum due by virtue of the faid bond, AND of the faid bond itself, and decree on the passive titles above narrated, and of all further action, execution and diligence, competent in the premises : WHICH DISCHARGE I BIND and OBLIGE me, my heirs, executors and successors, to WARRANT at all hands, and against all deadly, as law will ; AND I have herewith delivered up to the faid trustees an extract of the foresaid bond, and

and of the said decret, with the foresaid confirmed testament, and the principal assignation of the said debt by the said H R in my favour, to be cancelled or kept by them at their pleasure in time coming. AND I CONSENT to the REGISTRATION hereof, &c. (*as on page 285.*)

*Discharge of a Bond which has been lost.*

I, C D, CONSIDERING that A B, by his bond, of date , for the causes therein specified, bound and obliged him, his heirs, executors, and successors whomsoever, to repay to the said G H, his heirs, executors and assignees, the sum of 500l. Sterling, (*here the ground of debt will be narrated*) as the said bond in itself more fully bears; but which bond has been mislaid: AND SEEING that the said A B has, notwithstanding thereof, made payment to me of the said principal sum of 500l. Sterling, with interest thereof since , amounting, together, to the sum of 525l. Sterling, whereof I hereby grant the receipt; THEREFORE, I do hereby EXONER, ACQUIT, and DISCHARGE the said A B, his heirs, executors, and successors whomsoever, of the said principal sum of 500l. Sterling, and whole interest due thereon, with the said sum of 100l. Sterling of liquidate penalty, all as contained in the

saïd bond, with the saïd bond itself, whole tenor and contents thereof, and all that has or may follow thereon. AND FURTHER, in case the saïd original bond should, at any time hereafter, appear vested in any other person, and if the saïd A B shall in any way be subjected to the payment thereof, or be thereby involved in any trouble or expense, I the saïd C D do hereby BIND and OBLIGE me, my heirs, executors and successors whomsoever, to repeat and pay back to the saïd A B, and his forefaids, the saïd sum received by me in manner foresaid, with interest thereof, or as much thereof as shall defray the expense which the saïd A B, or his forefaids, may so incur, and fully to free and relieve the saïd A B of any such claim, and of all damage and expense which he or his forefaids may in any shape sustain; and that under the penalty of 50l. Sterling, over and above performance: WHICH DISCHARGE I BIND and OBLIGE me, and my forefaids, to warrant to the saïd A B, and his forefaids, at all hands, and against all deadly, as law will; AND, should the saïd principal bond be hereafter discovered, I BIND me and my forefaids immediately to deliver up the same to the saïd A B, or his forefaids, to be cancelled and used by them at pleasure. AND I CONSENT to the REGISTRATION hereof, (*as on page 285.*)

*Conditional*

*Conditional Discharge, if the Grantor shall die  
without Heirs-male.*

I B, CONSIDERING that A, by his bond, &c. *(here narrate the ground of debt)*; AND being resolved, from the regard I have for the said A, to discharge him of the said bond, and sums thereby due, in the event that I shall die without leaving an heir-male of my own body in existence at the time of my death; THEREFORE I, under the condition herein after expressed, do hereby EXONER, ACQUIT, and DISCHARGE the said A, his heirs, executors and successors, of the said sum of 500l. Sterling of principal, with the penalty and interest contained in the said bond, and that may be due thereby at my death, in case there shall not be an heir-male of my body in existence at the time of my death: BUT DECLARING, that in the event of my leaving an heir-male of my body in existence at the time of my death, then the above discharge shall be void and ineffectual, and shall afford no ground of defence whatever to the said A and his forefaids, against implementing the said bond; AND RESERVING ALWAYS full power to me to revoke or cancel these presents at any time of my life; BUT in case I neither revoke nor cancel these presents, nor leave an heir-male of my body in existence at the time of my death, I BIND and OBLIGE me, and my heirs, executors and

T 3

successors,

fucceffors, to WARRANT this discharge at all hands, and againft all deadly as law will, whether the fame be found in my own poffeffion, or in the poffeffion of any other perfon, undelivered ; with the want of delivery whereof I hereby difpenfe. AND I CONSENT to the RÉGISTRATION, &c. (*as on page 285.*)

*Discharge where more than one Person is bound  
in the Bond.*

IN this clafs of difcharges, the difcharge is not abfolute, but partial, effectual to the receiver only ; while the bond is preferved in force againft the coobligant, by an affignation in favour of the debtor by whom the payment is made. In order to enable the creditor to give a full affignation, the debtor will produce a total bond of relief ; but, where this cannot be done, the creditor will exprefs the affignation in general terms, leaving to the debtor to afcertain the extent of his relief. The difference, in thefe two cafes, I fhall explain by examples ; and then add an inftance or two of more complicated forms of the deed.

*Discharge*

*Discharge and Assignation, where the Receiver  
has no Bond of Relief to produce.*

I C, CONSIDERING that A and B, by their bond, dated , for the causes therein specified, BOUND and OBLIGED themselves, conjunctly and severally, their heirs, executors and successors whomsoever, to content and pay to me, my heirs, executors or assignees, the sum of 500l. Sterling, and that against the term of Martinmas then next, with 100l. Sterling of liquidate penalty in case of failure; together also with the legal interest of the said principal sum, from the date of the said bond till payment, as the said bond, registered in the books of Council and Session , more fully bears: AND NOW SEEING that the said B has made payment to me of the said principal sum of 500l. Sterling contained in the said bond, and interest thereof since the term of , (all former interest having been paid up), amounting, in whole, at the date hereof, to the sum of 550l. Sterling, whereof I hereby grant the receipt; THEREFORE, I have not only exonerated and discharged, as I hereby exoner, acquit, and simpliciter discharge the said B and his forefaids, of the said principal sum, bygone annualrents due thereon, and penalty fore-said, all contained in and due by the fore-said bond, AND of the said bond itself, whole tenor

and contents thereof, and all that has or is competent to follow thereon ; BUT ALSO, that the said B may operate such relief of the foresaid debt as may be competent to him from the heirs and representatives of the said A, I have assigned and made over, as I hereby ASSIGN, CONVEY, and MAKE OVER, to and in favour of the said B, and his forefaids, the foresaid principal sum of 500l. Sterling, interest and penalty above specified, all contained in the foresaid bond, with the said bond itself, and all action competent to me thereupon ; SURROGATING and SUBSTITUTING the said B, and his forefaids, in my full right and place of the premises for ever ; with power to him to demand, receive, and discharge the sums of money, principal, interest, and penalty above specified, contained in the foresaid bond, and to do every thing in relation to the premises which I could have done before granting hereof : WHICH DISCHARGE and ASSIGNATION I bind myself to WARRANT, as follows ; viz. the discharge at all hands, and against all deadly ; and the assignation from all facts and deeds, done, or to be done, by me, in prejudice thereof ; AND I have herewith DELIVERED UP the said bond for the purposes foresaid ; and CONSENT to the registration hereof in the books of Council and Session, or others competent, therein to remain for preservation ; and, for that purpose, I CONSTITUTE

MY PROCURATORS, &c.

In witness whereof, &c.

*Discharge*

*Discharge and Assignation by the Creditor to two of three joint Obligants producing Bonds of Relief from the third Co-obligant, for the purpose of enabling them to procure Relief from his Heirs.*

I J C, considering that J M, W M, now deceased, and J T, by their bond, dated , for the causes therein specified, bound and obliged themselves, jointly and severally, and their heirs, executors and successors whomsoever, to content and pay to me, my heirs, executors or assignees, the sum of 200l. Sterling against the term of Martinmas , with 40l. Sterling of penalty in case of failure, and the legal interest of the said principal sum, from the date of the said bond to the said term of payment, and yearly and continually thereafter during the not-payment of the same: AND SEEING that J M and J T have made payment to me of the foresaid sum of 200l. Sterling of principal, contained in the said bond, with the interest thereof since the date of the said bond; AND have EXHIBITED to me TWO BONDS of RELIEF of the said bond, bearing date , one of the said bonds of relief being granted by the said deceased W M to the said J M, and the other of the said bonds of relief being granted by the said W M to the  
the



the said J T ; AND they being desirous that I should grant them the discharge and assignation under written ; THEREFORE, I HEREBY EXONER, QUITCLAIM, and simpliciter DISCHARGE the said J M and J T, and their heirs, executors and successors, of the foresaid sum of 200l. Sterling of principal, 40l. Sterling of penalty, and interest of the said principal sum, bygone and in time coming, all contained in, and due by the foresaid bond, granted to me by the said J M and W M, and J T ; and of the said bond itself, and all that has followed, or may be competent to follow thereon, in so far as regards the said J M and J T, and their foresaids. BUT FURTHER, in order that they may the more effectually operate their relief from the heirs and representatives of the said deceased W M, and the estate, heritable and moveable, that belonged to him at the time of his death, I do hereby MAKE, CONSTITUTE, and APPOINT the said J M and J T equally, and their respective heirs, executors and assignees, my irrevocable cessioners and assignees, in and to the foresaid sum of 200l. Sterling of principal, 40l. Sterling of penalty incurred through failure, and the legal interest of the said principal sum, from the date of the said bond to the date hereof, and in time coming during the not-payment ; AND IN and to the said bond itself, whole tenor and contents thereof, with all that has or can follow thereon ; SUPROGATING and SUBSTITUTING the  
said

faid J M and J T equally, and their foresaids, in my full right and place of the premises for ever ; with full power to them to do every thing in the premises which I could have done myself before granting hereof : WHICH DISCHARGE and ASSIGNATION I BIND and OBLIGE me, my heirs and successors, to WARRANT as follows, viz. the said discharge at all hands, and against all deadly, AND the assignation above written, from all facts and deeds, done, or to be done, by me in prejudice thereof ; AND I have herewith DELIVERED UP the said bond, to be kept and disposed of by the said J M and J T, as their own proper writ and evident in all time coming ; AND I CONSENT to the REGISTRATION hereof, &c. (as in page 285.)



*Discharge and Assignation, by the Bank of Scotland, of a Bond, Diligence and Letters of Inhibition, in favour of one of the Debtors, the Debt being paid up by a Purchaser of the Estate of that Debtor, conveying also a Right to certain poinded Goods.*

I J S, treasurer to the Governor and Company of the Bank of Scotland, CONSIDERING that G Y, senior, merchant , and E M, and G Y, junior, both merchants in Edinburgh, by their bond, dated , bound and obliged them, jointly

jointly and severally, and their heirs, executors and successors whomsoever, to content and pay the sum of 2000l. Sterling at the bank office and in bank money, to the Governor and Company of the said bank, and their assignees, or to me, as their treasurer, or my successors in office, in their name, and for their behoof, against the 16th November then next, WITH 400l. Sterling of liquidate expenses in case of failure; TOGETHER ALSO with the due and ordinary annual rent of the said principal sum, from the , during the not-payment, as the said bond, insert and registered in the books of Session , more fully bears: UPON which registered bond there were raised, at my instance, as treasurer foresaid, letters of horning against the before-named debtors, which are dated and signeted , and which were duly executed; as also, of the same date, there were letters of inhibition raised on the said registered bond, at my instance, as treasurer foresaid, against the whole three debtors, which were duly executed against them, and the same, with the executions thereof, recorded in the general register of hornings and inhibitions kept at Edinburgh, on the , and also the said letters of horning and a charge of payment, given to the debtors in virtue thereof, were, at the desire of the said G Y senior, J H, accountant in Edinburgh, trustee, and W S, agent for the creditors of the said debtors, lodged in

in the hands of the said J H and W S, who, along with the said G Y, senior, not only engaged to free and relieve the said bank of all damage or expense the bank might sustain, through the said trustee and agent making use of the said letters of horning; but the said trustee and agent having, at the same time, got possession of other letters of horning, raised at the instance of the cashier of the Royal Bank, for two several debts due by the obligants to that bank, they, the said trustee and agent, did proceed, in virtue of the said letters of horning, raised in name of the Treasurer and Cashier of both the said banks, to put the said letters of horning to further execution by poinding; and did thereupon cause poind, in name of both the said banks, certain goods, mercantile effects, and household plenishing, belonging to the said E M, to G Y, and to E M and Co., to the appraised value and amount of 1674l. 12s. 9d. Sterling, conform to an execution of poinding under the hand of \_\_\_\_\_, messenger, and of \_\_\_\_\_, not. pub., bearing date \_\_\_\_\_; and which sum, or the goods so poinded, remain still in the hands of the said J H or W S, or of some person entrusted by them with the care thereof; and no part thereof has been hitherto applied for payment of the debt before recited, due to the said Bank of Scotland: AND NOW SEEING that J Y, who got allowance of the sum after mentioned out of the price of the  
the

the lands of \_\_\_\_\_, purchased by him from the said G Y, senior, has, in behalf of the said G Y, senior, made payment to me, as treasurer, to and in name and behalf of the said Governor and Company of the Bank of Scotland, of the foresaid sum of 2000l. Sterling of principal, due by the foresaid bond, and of the sum of interest incurred thereon to the date hereof, and of the sum of \_\_\_\_\_, as the expense of the said letters of horning and inhibition, so far as executed in name of the said bank, amounting, the said sums, to the accumulated sum of \_\_\_\_\_, whereof I hereby acknowledge the receipt: THEREFORE, I not only exoner and discharge the foresaid debt, principal, interest and penalty, contained in the said bond, with the said bond itself, diligence following thereon, and, in particular, the said letters of inhibition and executions, and whole effect thereof, so far as the said debt and diligence may affect the said G Y, senior; BUT ALSO, to the end the said G Y, senior, may operate his relief, as accords, from the said other obligants, or out of their effects, I have MADE and CONSTITUTED, and, in name and behalf of the said Governors and Company, MAKE and CONSTITUTE the said G Y, senior, and his heirs and assignees, irrevocable cessioners and assignees to the said Governor and Company of the Bank of Scotland, and to me, as their treasurer, in and to the said principal sum of 2000l. Sterling, 400l.

Sterling of liquidate expenses, and interest of the said principal sum, bygone and in time coming, contained in the bond of above narrated, granted by the said three obligants to the said Governor and Company, AND IN and TO the said bond itself, letters of horning and inhibition raised thereon, and executions thereof, and whole effect of the same; together with all right, title, or interest, which the said Governor and Company, or I, as their treasurer, have or can claim, in or to all or any of the said goods and effects apprised or poinded, in virtue of the said letters of horning executed in my name, or the real use and property thereof, or the said sum of 1674l. 12s. 9d. Sterling, as the estimated amount and price of the said poinded goods, agreeably to the execution of poinding: All which goods, or prices thereof, are, by the acceptance of these presents, acknowledged to be, or at least to have been, under the custody and keeping of the said J H and W S, trustee and agent for the creditors of the said obligants, but never in the custody or keeping of the said Governor and Company, nor of me, as their treasurer; SURROGATING and SUBSTITUTING the said G Y, senior, and his heirs and assignees, in the place of the Governor and Company of the said Bank, and in my place: WHICH DISCHARGE and ASSIGNATION the said Governor and Company of the Bank of Scotland are hereby OBLIGED to

WARRANT

WARRANT to the said G Y, senior, and his forefaids, as follows ; viz. the said discharge, at all hands, and against all deadly, as law will ; and the said assignation from all facts and deeds done, or to be done, by the Governor and Company, or me, as their treasurer, prejudicial hereunto : AND there is herewith DELIVERED UP to the said G Y, senior, the extract of the said bond, and letters of inhibition, and executions thereof, and certificate of registration marked thereon : And it is acknowledged and declared on his part, that the said letters of horning, and executions thereof, with the foresaid execution of poinding, and other diligence, are already in the custody of the said J H and of the said W S, or of one or other of them : AND I CONSENT to the REGISTRATION hereof, &c. (*as on page 285.*)

*Discharge and Retrocession.*

I B, CONSIDERING that A, by his bond and assignation, bearing date \_\_\_\_\_, became bound to pay to me, my heirs or assignees (excluding my executors), the sum of 400l. Sterling, against the term of Whitsunday then next, WITH 80l. Sterling of liquidate expense in case of failure, with interest of the said principal sum, from the date of the said bond and assignation to the foresaid term of payment, and thereafter during the  
the

the not-payment of the said principal sum : AND for me and my forefaids, our FURTHER SECURITY, and more sure payment of the forefaid sums of money, principal, interest and penalty above specified, the said A thereby made, constituted and appointed me and my forefaids his irrevocable-cessioners and assignees, in and to as much of the first and readiest of the principal sum of 1000l. Sterling, annualrents thereof that should be resting at the time, and of the sum of 200l. Sterling of liquidate expenses, all contained in a bond granted by J W. to the said A, bearing date , as would completely satisfy and pay to me, and my forefaids, the said principal sum of 400l. Sterling, and whole interest thereof that should become due thereon, with 80l. Sterling of penalty, contained in the bond above written, granted by the said A to me, as the said bond and assignation at more length bears : AND SEEING the said A has made payment to me of the forefaid principal sum of 400l. Sterling, with the interest thereof from the to the date hereof, whereof I acknowledge the receipt ; THEREFORE I have not only exonerated and discharged, as I hereby EXONER and DISCHARGE the said A, and his heirs, executors and successors, of the forefaid principal sum of 400l. Sterling, interest due thereon, and of the said sum of 80l. Sterling of liquidate expenses, contained in the forefaid bond and assignation, AND of the said bond itself, whole



tenor and contents thereof, and of all that has or may follow thereon ; BUT ALSO, I hereby RETROCESS, REFONE and RESTORE the said A, and his executors and successors, to their own right and place in the foresaid bond granted by the said J W to the said A, and of the whole sums of money therein contained, to the effect the said A, or his forefaids, may uplift and discharge the same, in such manner, and as freely in all respects as he might have done before granting the said assignation in my favour : AND I BIND and OBLIGE me, and my heirs, executors and successors, to WARRANT the foresaid DISCHARGE at all hands, and against all deadly, as law will, AND the said RETROCESSION from all facts and deeds, done or to be done by me prejudicial hereto ; AND I have herewith DELIVERED UP to the said A the said principal bond and assignation above recited, with the instrument of intimation thereof, to be used and disposed of by him at pleasure : AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation ; and for that purpose CONSTITUTE

MY PROCURATORS, &c. In witness whereof, &c.

*Discharge*

*Discharge and Translation.*

I, D, considering that A and B, by their bond, of date . . . , bound and obliged themselves, their heirs, executors and successors, to make payment to C, his heirs, executors and assignees, of the sum of 400l. Sterling, (*here the bond will be narrated in common form*) to which bond, and sums of money thereby due, I have right by assignation from the said C, dated . . . , as the said bond and assignation in themselves more fully bear: AND SEEING that the said B has made payment to me of the foresaid sum of 400l. Sterling, and 20l. Sterling of interest due thereon preceding this date, amounting together to the sum of 420l. Sterling, whereof I grant the receipt; THEREFORE I hereby not only EXONER and DISCHARGE the said B of the said principal sum of 400l. Sterling, and interest thereof since . . . , (*all former interests having been previously paid up*) and of the said sum of 80l. Sterling of liquidate penalty, all contained in the said bond, AND of the said bond itself, with all that has or can follow thereon; BUT ALSO, to the effect he may operate his relief thereof from the said A, as accords of law, and in terms of the right in his own person, I hereby ASSIGN and TRANSFER, to and in favour of the said B, his heirs, executors and assignees, the foresaid

principal sum of 400l. Sterling, interest thereof since , and in time coming, with the said sum of 80l. Sterling of liquidate penalty, contained in and due by the said bond, with the said bond itself, and assignation thereof in my favour, with all that has or can follow thereon ; SURROGATING and SUBSTITUTING the said B and his forefaids in my full right and place of the premises, with power to them to demand and receive the foresaid sums of money, principal, interest and penalty hereby conveyed, and on payment to grant discharges and conveyances thereof, and generally to do every other thing in the premises which I could have done before granting hereof: WHICH DISCHARGE and CONVEYANCE above written, I BIND and OBLIGE me and my forefaids, to WARRANT to the said B and his forefaids, as follows, viz. the said DISCHARGE at all hands, and against all deadly, and the said CONVEYANCE from all facts and deeds done or to be done by me in prejudice thereof ; AND I have herewith DELIVERED UP to the said B the said bond and assignation, with the instrument of intimation thereof, to be kept by him and his forefaids as their own, and used by them at pleasure: AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation ; and for that purpose I CONSTITUTE

MY PROCURATORS,

&c. In witness whereof, &c.

3. Dis-

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3. DISCHARGE OF OTHER GROUNDS OF DEBT.*Discharge or Docquet of an Account of Charge and Discharge.*

AT EDINBURGH, the twenty-fifth day of August 1800, the foregoing ACCOUNT of CHARGE and DISCHARGE between A and B was this day duly revised and considered by the parties, compared with the vouchers thereof, and found to be justly and regularly stated; the charge thereof amounting to 500l. Sterling, and the discharge to 400l. Sterling; leaving a balance due by the said A to the said B of 100l. Sterling; which balance the said A has instantly paid up to the said B, whereof he hereby acknowledges the receipt; and the whole vouchers and instructions of both sides being interchanged and delivered up to the respective parties, THEY hereby MUTUALLY DISCHARGE each other of the foresaid account, and whole articles therein contained; AND they OBLIGE themselves, their heirs, executors and successors respectively, to WARRANT this discharge at all hands, as law will. IN WITNESS whereof, both parties have subscribed the said account, consisting of        pages, and this docquet, written by C, and another account and docquet of the same tenor and contents, one to be kept

by each party, place and date foresaid, in presence of E and F, witnesses.

E, witness.

A.

F, witness.

B.

*Alterations on the Docquet.*

Where the balance is not to be paid, but carried to a new account, the docquet will bear this : ‘ Which balance of 100l. Sterling has  
‘ been carried to the credit of the said B, in a  
‘ new account opened with him in the books  
‘ of the said A ;’ or, when a bill or bond is given, the fact will be expressed in the docquet,  
‘ for which balance of 100l. Sterling the said  
‘ A has this day given his bill to the said B,  
‘ payable one day after date ;’ or for which  
‘ balance of 100l. Sterling the said A has given  
‘ his bond to the said B, of this date, payable  
‘ to him, his heirs, executors or assignees, a-  
‘ gainst the term of Martinmas next, and bear-  
‘ ing interest from this date to the said term of  
‘ payment, and thereafter, during the not-pay-  
‘ ment thereof.’

*Discharge of a Bill and Diligence.*

I, A, CONSIDERING that B, by his bill, bear-  
ing date \_\_\_\_\_, drawn by him upon, and ac-  
cepted

cepted by C, ordered him, one day after date, to have paid to him, the said B, or order, the sum of 100l. Sterling, which bill was indorsed by the said B to D, as the same bears: That the said D obtained decret at his instance before the Lords of Council and Session against C, son and heir of the said C, and as representing his said father, and his tutors and curators, decerning and ordaining him to make payment to the said D, of the said principal sum of 100l. Sterling, interest thereof since the said , and in time coming during the not-payment of the said principal sum, with 6l. 10s. Sterling of expenses of plea, and extracting the said decree, as the same bears; AND THAT the said D, by his assignation, of date , assigned and made over to me the said principal bill and decree, with the sums, principal, interest and expenses therein contained; AND THAT I thereupon raised letters of arrestment in my name, dated and signeted ; in virtue whereof, messenger passed, and, upon , lawfully fenced and arrested in the hands of E the sum of 200l. Sterling, less or more, resting owing by him to the said C, by bond, bill, decree, or in whatever manner of way; to remain under sure fence and arrestment, ay and until I was completely paid of the said principal sum of 100l. and interest thereof, contained in the said bill: That thereafter I raised an action of forthcoming, at my instance, against the said

E and C, principal debtor, for his interest, in which I obtained a decree in my favour, decerning and ordaining the said E to make payment to me of the said sum of 200l., or at least of as much thereof as would satisfy and pay me the said sums, principal, interest and expenses, contained in the said decree, to which I have right in manner foresaid ; of which decree the said E and C obtained a suspension, as the same, dated , and signeted , bears : Which suspension being insisted in before Lord Ordinary, his Lordship, by interlocutor of date , found the two decrees above narrated null, and the arrestment void ; but allowed me to insist, as in a libel, for payment of the sums contained in the said bill ; and the process being thereafter several times called, and last of all on the , when his Lordship, by interlocutor of that date, decerned for the sum in the bill, and annualrents thereof since , being the day of the decree of constitution charged on, as the minutes in process more fully bear : AND NOW SEEING that the said C has, by the hands of F, one of his curators, made payment to me of the foresaid sum of 100l. Sterling, and interest thereof from the said to the date hereof, whereof I acknowledge the receipt ; THEREFORE I exoner, quit-claim, and simpliciter discharge the said C, and his heirs and executors, and all concerned, of the foresaid principal

cipal sum of 100l. Sterling, and of the interests due thereon, contained in the bill above narrated, and of the said bill itself, decree of constitution, and decree of forthcoming, and of the foresaid process of suspension, whole minutes, interlocutors pronounced therein, and of all that has followed, or may follow in the premises: WHICH DISCHARGE I oblige me, my heirs and successors, to warrant to the said C and his foresaids, at all hands, and against all deadly: AND in respect the said decree has not been extracted, in order to save expenses to the said C, therefore he, by acceptation hereof, BINDS and OBLIGES himself and his foresaids, to free and relieve me at the hands of the Clerks of Session, from the expense of extract, composition therefor, or other demand they may have against me on account of the said unextracted decree; with and under which declaration this discharge is granted, and to be accepted of by the said C, and not otherwise: AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation; and for that purpose CONSTITUTE  
MY  
PROCURATORS, &c. In witness whereof, &c.

*Discharge*



*Discharge of a Decree of the Court of Session.*

I A, CONSIDERING that B stood indebted to me in the sum of 100l. Sterling, contained in an account, commencing , and ending ; for payment whereof I brought an action against the said B before the Court of Session, wherein I obtained decree against him, decerning and ordaining him to make payment to me of the said sum of 100l. Sterling, and interest thereof from , being a year after the date of the last article of the said account, with the sum of 20l. Sterling of expenses of process, besides the expense of extracting the said decree, as the same should be ascertained by the Collector of clerks' dues, as the said decree, and grounds thereof, more fully bear : AND NOW, SEEING that the said B has, in obedience to, and in terms of the said decree, instantly made payment to me of the said principal sum of 100l. Sterling, with the sum of 9l. of interest thereof from the said to this date, 20l. Sterling of expenses of process, and 3l. Sterling, being the expense of extracting the said decree, amounting, in whole, to the sum of 132l. Sterling, whereof I hereby acknowledge the receipt ; THEREFORE, I hereby EXONER, ACQUIT, and simpliciter DISCHARGE the said B, his heirs, executors, and successors whomsoever, of the fore-said sums of money, principal, interest, expenses of  
of

of process, and extracting the said decree, as above mentioned, with the said decree itself, grounds and warrants thereof, and all that has followed or is competent to follow thereon, for ever : WHICH DISCHARGE I OBLIGE me, my heirs and successors, to warrant at all hands, and against all dead-ly, as law will ; AND having DELIVERED UP to the said B the said decree and account, to be used by him as his own proper writs in time coming, I CONSENT to the REGISTRATION hereof, (*as on page 285.*)

*Discharge of an Inhibition and Arrestment upon a Dependence, reserving the Effect of the original Process itself.*

I A, CONSIDERING that I have raised a process at my instance before the Lords of Council and Session against B, concluding (*here repeat the conclusions of the action*) : Upon the dependence of which process I raised letters of inhibition, containing arrestment, which are dated and signeted , and which were executed against the said B and the lieges on the , and registered in the general register of inhibitions, &c. at Edinburgh, the ; and, in virtue thereof, I used arrestments in the hands of D and E, on the : THAT, AFTER various proceedings in the said process, the same has been allowed

lowed to lye over uninflited in for more than year and day, and is now asleep, without any final decree being pronounced therein ; and, being fully satisfied of the sufficiency of the said B to pay whatever sum may be ultimately found due to me on discussing the said action, I have agreed to discharge the said inhibition, and loose the said arrestment laid on in the hands of D and E as aforesaid ; THEREFORE, I the said A have not only discharged, as I, by these presents, RENOUNCE and DISCHARGE the foresaid inhibition, raised and executed at my instance against the said B, whole executions thereof, and all that has followed or can follow thereupon ; AND I DECLARE the same to be VOID, and of no force and effect ; and the said B, and his lands, teinds, heritages and others, to be as free and disincumbered in every respect, as if the said letters of inhibition had never been so raised and executed ; BUT ALSO, I do hereby PASS FROM and DISCHARGE the foresaid ARRESTMENTS, used and laid on at my instance upon the effects of the said B, in the hands of the said C and D, and declare the same to be loosed, and the said B at full liberty to receive the sums so arrested from the said persons, in the same manner, and as freely in every respect as if the said arrestments had never been laid on as aforesaid ; DECLARING ALWAYS, that, notwithstanding of the above discharge, I have not passed from, nor, by any thing herein contained, am I to be understood

as

as having passed from, my claims against the said B, as contained in the said summons; BUT the same are hereby RESERVED entire to me; and it shall be lawful to me to waken the said process at any time, and follow out and pursue the same, as if this discharge had never been granted; WHICH DISCHARGE I OBLIGE me to WARRANT from my own facts and deeds: And having herewith delivered to the said B the said registered inhibition, and executions thereof, with the executions of the said arrestments, I CONSENT to the REGISTRATION hereof, &c. (*as on page 285.*)

*Discharge of a Backbond.*

I A, CONSIDERING that M, by his backbond, dated \_\_\_\_\_, on a narrative of W's having granted an assignation in his favour, of 500l. Sterling, with interest thereof from \_\_\_\_\_, &c.; and subsuming, that the said assignation was only a trust in his person, for behoof of the said W, in order to his using proper diligence for rendering the same effectual, he thereby bound and obliged himself and his heirs, to hold just count and reckoning with W, for whatever he should receive in virtue of the said assignation, or that he should denude himself, and retrocess the said W, whenever he should be so required, under the penalty of 100l. Sterling, besides performance: To which  
backbond,

backbond, and sums therein contained, I have now right, by conveyance from the said W, of date : AND SEEING that the said sum of 500l. Sterling was allowed to the said M out of the price of the estate of , acquired by him for behoof of D, and that the said M did accordingly denude himself of the said lands in favour of the said D, with the burden of their relieving him of the said backbond, AND that the said D hath, by his bond of corroboration in my favour, bearing date , corroborated the foresaid debt, and therein accumulated into one sum the bygone interest on the said debt; and it being expressly agreed betwixt the said D and me, on his so doing, that I should discharge the representatives of the said M of the said backbond, in so far as they can be affected thereby; THEREFORE, I hereby EXONER, ACQUIT, and simplici-ter DISCHARGE, the whole heirs and representatives of the said M, of every description and denomination, of the foresaid BACKBOND, and whole clauses and contents thereof, and penalty therein contained; and that in so far as the same may affect either their persons, or any means and estate, heritable and moveable, falling to them, or either of them, by the death of the said M, in any manner of way; WITHOUT PREJUDICE always to my using the said backbond, and grounds of debt therein contained, and the foresaid bond of corroboration, granted to me as aforesaid, by the said D,

D, as a ground for affecting the person of the said D, or his said lands and estate of , or any other means and effects belonging to him ;  
**AND I BIND** me and my forefaids to **WARRANT** this discharge at all hands, and against all deadly :  
**AND I CONSENT** to the **RÉGISTRATION** hereof, &c. (*as on page 285.*)

*Discharge of Letters of Credit, and in general of  
all Claims.*

We A, G, and O's, merchants in London,  
**CONSIDERING** that R M of , by his letter, dated , directed to me the said A O, did desire me to furnish G M, brother to the said R M, at Bourdeaux, with a credit for 500l. Sterling ; **AND THAT** the said R M, by his bond or obligation, bearing date , did **OBLIGE** himself, his heirs and successors, to reimburse and repay whatever sums of money I the said A O might, from time to time, pay and advance to the said G M, not exceeding the sum of 500l. Sterling, and the said credit was to remain in force until countermanded by the said R M ; **AND THAT** the said R M, by his letter directed to me the said G A, bearing date , and, in several subsequent letters, required the continuance of the said credit, as in the missive letters and obligation above mentioned, more fully  
is

is expressed: **AND NOW SEEING** that the said R M has recalled and withdrawn the said credit, and reimbursed to us the sum of 175l. 15s. 7d. Sterling, and interest due thereon, contained in a bond granted by the said G M to me the said G O, being the whole sum due of the advances from time to time made by us, in virtue of the letters of credit and obligation above mentioned; and which bond, I the said G O have assigned to the said R M, conformably to my assignation in his favour of this date: **AS ALSO SEEING** the said R M, with whom we had otherwise considerable dealings, has satisfied and cleared all debts and demands that we, or either of us, can claim or demand from him any manner of way preceding this date; **THEREFORE** we have exonerated and discharged, and we hereby **EXONER, ACQUIT,** and simpliciter **DISCHARGE** the said R M, and his heirs and executors, of the foresaid two letters of credit, and other obligatory missive letters, and bond above mentioned, granted by him, and of the whole obligations upon him therein contained, **AND GENERALLY** of all claims and demands competent to us, or either of us, against the said R M, for whatever cause, occasion, or dealings, preceding the date hereof, and of all action, diligence, and execution competent, and of all that has followed or may follow thereupon: Which discharge we bind us, and our forefairs, to warrant to the said R M, and his above written, at  
all

all hands, and against all deadly : AND WE have herewith TRANSMITTED to the said R M the said letters of credit, to be cancelled by him : AND WE CONSENT to the REGISTRATION hereof, &c. (as on page 285.)

*General Discharge of Intrusions.*

I A, CONSIDERING that B, my son-in-law, did, on his marriage with the now deceased C, my daughter, intrude with the whole crop and stocking on my lands of ; AND SEEING that the said B has instantly made payment to me of the sum of 100l. Sterling, in complete satisfaction for his whole intrusions, and it being just and reasonable that he should be discharged thereof, therefore I hereby EXONER, ACQUIT, and simpliciter DISCHARGE the said B, his heirs, executors and successors, and all others concerned, of his whole intrusions with my said crop and stocking, and all other moveables, of whatever kind or denomination, intruded with by him, and belonging to me ; and I oblige myself, my heirs and successors, to WARRANT this discharge to the said B and his forefairs, at all hands, and against all deadly, as law will : AND I CONSENT to the REGISTRATION hereof, &c. (as on page 285.)



*Discharge to a Cashier and Manager for his  
Intromissions.*

I A, Earl of B, with consent of C and D, my curators, CONSIDERING that E, as cashier and manager appointed by me, with consent of my said curators, hath, since the last clearance, dated , intromitted with the rents of my estate, and other property belonging to me, from my factors and chamberlains, to the extent of 2152l. 16s. 7d. Sterling, as appears from an account thereof, now exhibited by him, and from his receipts in my factors' hands; AND that he hath necessarily and properly expended thereof, on my account, with the approbation of my curators, the sum of 2050l. 18s. 7d., as entered in the discharge of the said account, whereby there remains at present in the hands of the said E, a balance of 101l. 18s. Sterling: AND SEEING that I and my said curators are fully sensible of the regularity of the said account, and of all the articles of charge and discharge therein contained, and that the said E hath delivered up to me the whole vouchers of the discharge of the said account, whereof I hereby acknowledge the receipt; THEREFORE I, with consent of my said curators, and with and under the exception of the foresaid balance, which is to be charged against the said E in his next accounts, have exonerated and discharged,

charged, as I, by these presents, with consent  
 foresaid, EXONER and DISCHARGE the said E,  
 his heirs, executors, and successors, of the whole  
 intromissions had by him, with my rents, money,  
 and effects since his said former clearance, a-  
 mounting to the foresaid sum of 2152l. 16s. 7d.  
 Sterling, and of the several receipts granted by  
 him to my factors from time to time for the same;  
 as specially condescended on in the charge of the  
 said account, and of all action or execution com-  
 petent to me against the said E, for his said intro-  
 missions, and of the several partial receipts them-  
 selves, granted by him, as aforesaid, to my factors,  
 which I hereby declare shall not hereafter militate  
 against him, although not delivered up to him to  
 be cancelled: AND I, with consent foresaid, BIND  
 and OBLIGE me, my heirs and executors, to WAR-  
 RANT this discharge at all hands, and against all  
 deadly; AND, in CORROBORATION hereof, there  
 are two copies of the said account of charge and  
 discharge, subscribed by me and my curators, and  
 by the said E, relative hereto; and of this date;  
 one of these duplicates being for my use, and  
 the other for the use of the said E; BUT DECLAR-  
 ING ALWAYS, that this present discharge shall not  
 infringe, nor in any shape weaken the bond dated  
 , for the principal sum of 400l. Ster-  
 ling, bearing interest from its date, granted by F  
 and the said E, jointly and severally to me; and  
 which sum was lent to them out of the money re-

ceived from my said factors by the said E, and for which he has credit in the foresaid accounts, now fitted and discharged in manner above written : AND I CONSENT to the REGISTRATION hereof, &c. (*as on page 285.*)

*Discharge of a Trust.*

I A, CONSIDERING that the deceased B, my father, by trust-disposition, of date , and registered , DISPONED, ASSIGNED, and CONVEYED to and in favour of C, D, and E, or to one or more who should accept, (the majority, in case of their all accepting, to be a quorum), and to the survivors or survivor of those accepting, his or their heirs or assignees, heritably and irredeemably, All and Whole, &c. BUT IN TRUST, for the uses, ends and purposes, and with the powers, and under the conditions, provisions and declarations therein specified; and, amongst other powers thereby vested in the said trustees, they were empowered to name one of their own number, or any other person they should think fit, to be their factor, for uplifting the rents or price of the said subjects; and it was therein declared, that the trustees should nowise be liable for omissions, or diligence, or neglect in the management of the trust committed to them, nor for the intromissions, insolvency or neglect of the factor

factor or factors to be appointed by them, nor *in solidum* for one another, but each only for his own actual intromissions : And it is also thereby provided and declared, that the said trust should expire on my arrival at the age of twenty-one years complete ; as the said trust-disposition, containing procuratory of resignation, precept of *fasine*, and sundry other clauses, more fully bears : IN VIRTUE of which trust-deed, the said trustees were infeft in the whole heritable subjects thereby conveyed, agreeably to instrument of *fasine*, dated , and registered : AND NOW SEEING that E, the only surviving trustee, has, in terms of the said trust-right, fairly accounted to me for his intromissions under the said trust, and has now denuded himself of the said trust-estate, and conveyed the same to me, by disposition of this date, it is reasonable that I should grant the discharge under-written ; THEREFORE I do hereby EXONER, ACQUIT, and simpliciter DISCHARGE the said E, his heirs and successors, and the heirs and successors of the said trustee deceased, and the factors appointed by them, of their whole actings, intromissions, and management had by them, or any of them, in consequence of the said trust, or in relation thereto, any manner of way, and of the said trust-deed itself, and whole clauses therein contained, with all that has followed, or is competent to follow thereupon : WHICH DISCHARGE I BIND and OB-

LIGE me, my heirs and successors, to WARRANT to the said E and his forefaids, and to the heirs and successors of the other trustees, at all hands, and against all deadly, as law will: AND I CONSENT TO THE REGISTRATION hereof, &c. (as on page 285.)

*Discharge, by the Purchaser of an Estate, of certain Debts paid by him out of the Price, and which had been assigned to him, in so far as these Debts can affect the Seller's Person or separate Estate.*

I A, do hereby ACKNOWLEDGE and DECLARE, that in accounting with B for the price of the lands of \_\_\_\_\_, purchased by me from him, he has allowed me out of the said price the several sums of money following, which were advanced and paid by me to his creditors after named, on conveyances of their debts in my favour, viz. *(here the different debts were enumerated)*: And seeing the said several rights and conveyances are taken by me only in further security of the purchase of the said lands and estate of \_\_\_\_\_, acquired by me, as said is, and that the several sums for which the said debts were transacted and compounded, are allowed to me out of the said price; THEREFORE I have exonerated and discharged, as I, by these presents,

EXONER

EXONER and DISCHARGE the said B, and his heirs and executors, of the whole debts and sums of money, bonds, bills, and other grounds of debt, generally above mentioned, and whole effect thereof, as the same are more particularly recited in the several rights thereof in my person above recited, BUT that in so far only as the said debts may in anywise affect or burden the person of the said B, or any separate means and estate belonging to him, other than the said lands and estate, sold and disposed to me by his disposition above mentioned, excepting in the event that the said lands so sold to me shall be evicted; AND WITHOUT PREJUDICE to me to make use of the said debts and diligences in their utmost extent, for the further security of my said purchase, AND in corroboration of the absolute warranty in the said B's disposition to me: AND I BIND and OBLIGE me to WARRANT this discharge at all hands, and against all deadly, as law will: AND I CONSENT to the REGISTRATION hereof, &c. (*as on page 285.*)

*Discharge of Freight by the Captain of a Ship.*

I A, master of the ship : Whereas by  
a charter-party executed betwixt B and me, of  
date , I undertook a voyage from  
to , and thence back again,  
X 4 with

with a loading to , and which voyage has now been performed by me in safety ; for the performance whereof, the said B became bound, by the said charter-party, to pay to me the sum of , with all the duties therein mentioned :  
AND NOW SEEING the said B has made payment to me of the said sum of of freight, and of all the duties specified in the said charter-party, as is usual in the like cases, whereof I grant the receipt ; THEREFORE, I have EXONER-ED and DISCHARGED, as I, by these presents, for me and my constituents and owners of the said ship, EXONER, ACQUIT and DISCHARGE the said B, his heirs, executors and successors, and all others whom it may concern, of the said sum of as the freight stipulated by the said charter-party, and of the whole duties payable, according to the custom of the sea, and of the penalties contained in the said charter-party, with all that has, or may in any way follow thereon : And I BIND and OBLIGE me and my forefaids to WARRANT this discharge at all hands, and against all deadly, as law will. And having delivered my copy of the said charter-party to the said B, to be used by him at pleasure, I CON-SENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation ; and thereto CONSTITUTE

MY PROCURATORS, &c.

IN WITNESS WHEREOF, &c.

*Discharge*

*Discharge by the Owners to the Captain of a Ship.*

We C, D and E, owners of the ship called  
: Whereas, by charter-party, executed  
by B, merchant in , ON THE ONE PART,  
and A, master of the said ship, ON THE OTHER  
PART, (*here narrate the charter-party*): AND  
NOW SEEING that, after just count and reckoning  
betwixt us and the said A, in regard to the said  
freight and voyage, and allowance to him for his  
own and the seamens' wages, together also with  
the charges of outrigging and victualling the said  
ship, and other expenses during the course of the  
said voyage, there remains, of the said sum of  
freight, the sum of , due to us as own-  
ers, whereof there is paid to me the said C the sum  
of , as my third share; to me the said  
D the sum of , as my third share; and  
to me the said E the sum of , as my third  
share; extending, in whole, to the said sum of  
, being the balance of the said freight:  
THEREFORE, we the said owners have exonerated  
and discharged, as we hereby, each for himself  
individually, EXONER, ACQUIT and DISCHARGE  
the said A, his heirs and successors, of our re-  
spective shares of the balance due by the said A  
in the said count and reckoning, agreeably to our  
respective rights and interests in the said ship and  
freight,



freight, and of all other voyages and freights made by the said ship during the period that the said A has been master, and of all which we the said owners can ask or claim of the said A, preceding this date; dispensing with the generality hereof. WHICH DISCHARGE above written, we BIND and OBLIGE ourselves, and each of us individually, and our foresaids, to WARRANT to the said A and his foresaids, at all hands, and against all deadly, as law will. AND WE CONSENT to the REGISTRATION hereof, &c. *for preservation, in common form.*

CHAP.

CHAP. IV. OF THE DISPOSITION OF MOVEABLES.

THE right to moveables is transferred by possession ; and hence, in all commercial intercourse, with few exceptions, sales are completed by the mere delivery of the articles sold, and without the intervention of a title in writing. The only deeds, therefore, of which examples are to be given, are dispositions of the crop or stocking of a farm, or the furniture of a house.

There can be no doubt, that the payment of the price on the one hand, and, on the other, the delivery of the articles, in a sale of stocking or of furniture, will complete the right of the purchaser ; and yet instances will occur, where a deed, expressive of the transaction, may be required ; or perhaps the sale may take place, while the possession is allowed to remain with the seller ; and then the purchaser trusts to his disposition, and to an instrument of possession, in security of his purchase.

In this last case, the right of the purchaser will no doubt be secure against the seller and  
his

his heirs. But in questions with a second purchaser, or with the creditors of the seller, his title will afford him no right, unless he shall go on to complete it, by attaining possession of the articles purchased; and then the person who has first obtained possession, or the creditor who has first completed his diligence, will be preferable on the effects in question.

With this explanation of the nature of the right acquired by the purchaser of moveables, I shall give examples of the forms of the deed; taking first the case where the purchaser is in possession, and where, of course, the right is required merely as evidence of the transaction.

*Disposition of Household Furniture, where the Purchaser was at the Time in Possession.*

I A, CONSIDERING, that when my affairs went into disorder in the month of August ,  
I resolved to make a full surrender of my estate and effects, heritable and moveable, for the payment of my debts, AND, amongst other subjects, to surrender my household furniture at ,  
of which I had been in possession, till legal diligence obliged me to retire to the sanctuary: That at a meeting of my creditors, held ,  
it

it was AGREED to recommend to C, factor appointed by my creditors on my real estate; to make an inventory of my said household furniture, that the same might be disposed of to the best advantage; which inventory was accordingly thereafter taken, and made up in a regular manner, and different propositions were made concerning the method of selling and disposing of the said furniture: That a considerable time thereafter, a proposal was made by B, widow of the deceased A, my son, to purchase the whole household furniture, at the lump sum of 200l. Sterling, to be paid in ready money for behoof of my creditors, being the sum at which the said whole furniture was valued, in the estimate given in by me to my said creditors of my estate real and personal; and it being the joint and unanimous opinion of the trustees for my creditors, and of the said C, their factor, and of D, whom the creditors had appointed to be their agent, for converting my funds into ready money, that it would tend more to the benefit of my creditors to accept of the said offer, than to sell the same by roup in the country, I consented to the sale; and the said B, at the term of Whitsunday last, 1800, having given security to the said C for payment of the said price of 200l. Sterling, for behoof of my creditors, she was thereupon put in possession of the said furniture; BUT in regard that hitherto she has received no formal disposition thereof,

THEREFORE,

334 DISPOSITION OF MOVEABLES. *Ch. IV.*

THEREFORE I have assigned and disposed, as I hereby ASSIGN and DISPOSE, to and in favour of the said B, and her heirs, executors and assignees, the whole household furniture, beds, tables, chairs, silver plate, china, linen, or of whatever other quality, kind or denomination the same may be, belonging to me, and within the said house of , or office-houses thereof, at the time of my retiring to the sanctuary, as the same is more fully enumerated in the foresaid inventory, made up by the said C, which is here held as repeated ; WITH all right and title I have or can claim thereto in all time coming ; AND I hereby RATIFY and APPROVE of the POSSESSION of the said household furniture, already had by the said B, and the delivery thereof to her by the said C : AND I BIND and OBLIGE me, and my heirs and executors, to WARRANT this present disposition to the said B, and her forefairs, at all hands, and against all deadly : AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation ; and for that purpose I CONSTITUTE

MY PROCURATORS, &c. In witness whereof, &c.

*Disposition*

*Disposition of Moveables where the Disponer  
retains Possession.*

I A, for a certain sum of money paid to me by B, have sold and dispoed, as I hereby SELL, ASSIGN and DISPONE, to and in favour of the said B, his heirs, executors, or assignees whomsoever, All and Whole my household furniture, of whatever kind, nature or denomination, within my dwellinghouse of , and all and sundry my horses, cattle, sheep, and implements of husbandry, of whatever kind or denomination the same may be, upon my farm of , pertaining to me, all specified and contained in a particular inventory of the same, subscribed by me of the date hereof, together with all right or interest I can pretend thereto; SURROGATING and SUBSTITUTING the said B in my full right and place of the premises, with power to him to enter to the possession thereof, sell, use, and dispose thereupon, and generally every other thing thereanent to do, that I could have done before granting hereof: WHICH DISPOSITION, I BIND and OBLIGE me to WARRANT from my own facts and deeds, done or to be done in prejudice hereof: AND I CONSENT to the REGISTRATION hereof, &c. (as on page 285.)

*Instrument*

*Instrument of Possession.*

At \_\_\_\_\_, compeared personally B, to whom, and in whose favour, the disposition after mentioned, of the date \_\_\_\_\_, is made and granted by A, and, with us, the notary and witnesses subscribing, passed to the personal presence of the said A, within his dwellingplace at \_\_\_\_\_, HAVING and HOLDING in his hands the said disposition, whereby, for the onerous cause therein specified, the said A sold, assigned, and disposed to the said B, his heirs, executors, or assignees, All and Whole his household furniture, of whatever kind, nature, or denomination, within his said dwellinghouse of \_\_\_\_\_, and all and sundry his horses, cattle, sheep, and implements of husbandry, of whatever kind or denomination the same may be, on his farm of \_\_\_\_\_, pertaining to him, all specified and contained in a particular inventory of the same, subscribed by him, of the date of the said disposition, as the same, containing clause of warrandice, and other clauses, in itself more fully bears; AND in like manner, HAVING and HOLDING in his hands the particular inventory above mentioned, of the date of the said disposition, containing the whole particulars thereby conveyed, as the same more fully bears: WHICH DISPOSITION and inventory the said B exhibited and presented to the said A,  
humbly

humbly requiring him to give and deliver to the said B real, actual, and corporal possession of the household furniture and stocking above mentioned, contained in the said disposition and inventory above written : WHICH desire being just and reasonable, the said A complied with it ; and, having received the said disposition and inventory into his hands, he gave the same to me, notary-public, to be read and published in presence of the witnesses after named : All which I accordingly did : AFTER READING and PUBLISHING of which disposition and inventory, the said A, for implementing and completing the said right and disposition, gave and delivered to the said B, *ex propriis suis manibus*, real, actual, and corporal possession of the household furniture, and stocking above specified, and particularly enumerated and expressed in the foresaid disposition and inventory above mentioned ; AND THAT by DELIVERING to the said B a particular species of all or most of the several sorts of furniture and cattle, and others above disposed, as use is, all to be possessed and enjoyed by the said B and his fore-saids in time coming, agreeably to the tenor of the said disposition and inventory above mentioned in all points, none opposing or contradicting the same : Whereupon, and upon all and sundry the premises, the said B asked and took instruments in the hands of me notary-public subscrib-

VOL. IV.                    \*                    Y                    ing.



ing. THESE THINGS were so done, at and within the said A his dwellinghouse of , stables and court-yard, where the furniture, cattle, and others above written, then were, betwixt the hours of one and two afternoon, day, month, and year first above written, before and in presence of C and D, witnesses to the premises specially called and required.

C, witness.

*Quæ attestor, F, N. P.*

D, witness.

These examples will suffice for this form of deed.

*Disposition of a Share in the Theatre.*

I A, CONSIDERING that B, by his disposition, of date , conveyed to me, my heirs and assignees, one share of 100l. Sterling in the Theatre Royal of Edinburgh, subscribed and paid by him to the erection of the said Theatre, together with the rents or dividends due, or that might thereafter become due thereon, and whole privileges thereto annexed; AS ALSO, the said Theatre itself, with the pertinents thereof, and patent for performing therein, so far as the said B had right thereto, or security over the same, in consequence of the said subscription and payment, as  
the

**Ch. IV. DISPOSITION OF MOVEABLES. §39**

the said disposition more fully bears: AND NOW, SEEING that C has instantly made payment to me of the sum of 80l. Sterling, as the price of the said share, of which price I acknowledge the receipt, renouncing all objections in the contrary; THEREFORE, I the said A have SOLD, ALIENATED and DISPOSED, as I do hereby SELL, ALIENATE and DISPOSE, from me, my heirs and successors, to and in favour of the said C, his heirs and assignees whomsoever, All and Whole the foresaid share of 100l. Sterling in the said Theatre Royal of Edinburgh, originally the property of the said B, together with the annualrents or dividends due or accruing upon the same from and after the term of Martinmas last, and in time coming: As ALSO, the said Theatre Royal itself, and whole parts, privileges, and pertinents thereof, with the patent for performing plays therein, so far as concerns the share above disposed; together with all right, title and interest, claim of right, property and possession, which I, my predecessors and authors, heirs and successors, had, have, or anywise may have, claim, or pretend to the premises; and particularly the liberty and privilege of admission to all performances in the said Theatre, in the room and place of me the said A, and of my authors, and all the other rights and privileges specially expressed in a disposition and conveyance, dated \_\_\_\_\_, and recorded in the

Y 2

books.

books of Session (office ) the , made and granted by , the original patentee, to and in favour of B, and other original subscribers; to which disposition and conveyance, and the whole clauses and obligations therein contained, or other right following thereon, either in the person of the original subscribers, or their trustee, I hereby MAKE and CONSTITUTE the said C and his forefaids my cessioners and assignees for now and ever; but that in so far only as extends to the forefaid share hereby disposed, and no farther; with full power to the said C and his forefaids, to make up and complete all necessary titles for fully vesting the premises in their persons: AND for that purpose, I hereby TRANSFER and MAKE OVER, to the said C and his forefaids, every right competent to me for that effect, in virtue of the conveyance by the said B to me as aforesaid, and whole obligations, clauses, and stipulations therein contained, with all that has or may follow thereon: RESERVING ALWAYS from this conveyance the whole bygone dividends due on the said share preceding the said term of Martinmas; which dividends shall be chargeable by me against the said theatre, in the same manner as if the stock or principal subscription hereby conveyed had continued in my person: WHICH DISPOSITION and CONVEYANCE, I hereby BIND and OBLIGE me and my forefaids, to WARRANT

to

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to the said C and his forefaids, from all facts and deeds done, or to be done by me, in prejudice hereof; and I have herewith delivered up to the said C an extract of the disposition by the said B to me, to be used by him and his forefaids as their own evident in all time coming, so far as respects the share hereby conveyed. AND I CONSENT to the REGISTRATION, &c. (*in common form.*)

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**CHAR. V. OF CONTRACTS.**

UNDER this head, it would be natural to follow the arrangement of the Civil Law in regard to Contracts. By that law, some are real, depending on tradition; as, loan—commodate—deposition—pledge; or consensual, as, sale—location—society—mandate. But this arrangement, however consonant to the principle of the contract, does not always correspond with the forms of the deeds. Thus, all heritable rights have a natural connexion, from the clauses peculiar to that species of deed, by which a feudal right is constituted; and thus, in the view of the conveyancer, whether they fall under the one or the other of these contracts, every heritable right takes an arrangement depending on the feudal nature of the deed. Leases have so intimate a connexion with rights of land, and were originally so similar in their form, that they arrange more naturally with charter and disposition, than with deeds of location. Marriage contracts, again, from the same connexion with land, and from being in a manner deeds of succession, are, in a  
great

great measure, excluded from the Roman law arrangement. Our manner of constituting personal obligation by bond or bill, and the deeds connected with that department, by which the obligation is assigned or discharged, become so connected in their forms, that they, too, are excluded from that arrangement which the principle of the transaction would naturally point out. With the exceptions necessarily arising from these causes, the Roman law order shall be followed in regard to Contracts; and the Forms of this Chapter shall be arranged under the heads of Sale—Location—Deposit—Pledge—Society—Mandate.

## I. SALE.

### *Bill of Sale of a Ship.*

I A, ship carpenter in Leith, CONSIDERING that by agreement, of date , entered into betwixt B, merchant in Leith, on the one part, and me on the other, I thereby, for the sum of , became bound to build for the said B a ship of 300 tons burden, and of the dimensions specified in the said agreement; WHICH ship was launched on the day of , and received the name of , and is now  
Y 4 completely

completely rigged and ready for sea ; whereby I have fulfilled my part of the said agreement, while the said B has made payment to me, at the times specified in the said agreement, of the sums thereby stipulated as the price of the said ship : THEREFORE, I the said A do hereby SELL, ASSIGN, and TRANSMIT to, and in favour of the said B, his heirs, executors and assigns, the hull of the fore-said ship, now called the \_\_\_\_\_, of the burthen before specified, with her masts, yards, and other standing rigging, and whole appurtenances, as she presently lyes in the harbour of \_\_\_\_\_, to be from henceforth peaceably enjoyed and possessed by him and his forefaids, and to be let out, freighted, sold, used and disposed of by him at pleasure ; SURROGATING and SUBSTITUTING the said B and his forefaids in my full right, title and place of the premises for ever ; with full power to them to enter upon the possession, civil or natural, by any form of law competent, and to intromit with, receive and recover the premises by all lawful ways and means competent to the sole and undoubted proprietor of any moveable subject : WHICH SHIP, and this present right thereto, I BIND and OBLIGE myself, my heirs, executors and successors, to WARRANT to be good, valid and sufficient to the said B and his forefaids, in all waters, seas, rivers, creeks, passages, havens, harbours, roads and ports within or without the kingdom, from all debts, sums  
of

of money, arrestments, bottomries, clags, claims, hypothecations, and all other incumbrances whatsoever, that may anywise affect his free possession and use of the said ship in any manner of way; and that at all hands, and against all mortals : AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, Admiralty Court-books of Scotland, or other Judges' books competent, therein to remain for preservation, and that all necessary execution may pass on a decree to be interponed in form as effects; and, for that purpose, I CONSTITUTE

my procurators, &c.

IN WITNESS WHEREOF, &c.

*Vendition of a Ship.*

I A, CONSIDERING that the ship  
belonging to me, having been exposed to public  
roup and sale, on the            day of            ,  
B, shipmaster in            , purchased the same,  
as highest offerer, at the sum of            , and be-  
came bound in terms of the said articles of roup,  
as the same, with the minutes and enactment of  
roup, more fully bear; AND THAT the said B,  
on the            day of            , agreeably to an  
entry in the said conditions of roup, declared  
that the said purchase was made by him for be-  
hoof of C and D, merchants in            , to whom  
he



he made over the said enactment and articles of roup; THEREFORE, I the said A, in implement of my part of the said articles of roup, have sold, assigned, dispoed and made over, as I hereby SELL, ASSIGN, DISPONE and MAKE OVER to, and in favour of the said C and D, jointly, and their heirs, executors or assignees respectively, the said ship, called , presently lying in the harbour of , with her float-boat, sails, rudders, anchors, cables, apparel, appurtenances, and venditions thereof, to be from this time forth peaceably enjoyed and possessed by them and their foresaids, and to be navigated, let out, freighted, sold, used, and disposed of by them, as their own proper ship or vessel, in all time coming. Which brigantine was, in pursuance of an act passed in the 26th year of the reign of his present Majesty, chap. 60, entituled, ' An act for the further increase and encouragement of shipping and navigation,' registered at the port of ; I, the said A, having taken and subscribed the oath required by the said act; and having sworn that I was sole owner of the said ship or vessel, called the brigantine E, whereof M is at present master; that the said ship or vessel was built at Leith, in the county of Mid-Lothian, in the year 1792; and that she was never before registered. And Messrs R and S, surveyors, having certified that the said ship or vessel was British built, has two decks and two masts; that her length, from the fore part of  
of

of the main stern to the after part of the stern-post aloft, is eighty-one feet eleven inches ; her breadth at the broadest part, whether above or below the main wales, twenty-three feet ; her height between decks three feet eight inches, and admeasures one hundred seventy-eight and an half tons ; that she is a square-sterned brigantine, has no gallery and no head : And we the said owners consented and agreed to the above description and admeasurement, and caused sufficient security to be given, as is required by the foresaid act, as the certificate of the said registry, under the hands of N, collector, and O, comptroller, at the custom-house of the said port of G, of date the 11th day of October last, in itself bears. And I hereby SURROGATE and SUBSTITUTE the said Messrs C and D, and their foresaids, in my full right of the premises for now and ever ; with full power to them to meddle, intromit with, uplift, receive, use diligence for, and discharge the freights and whole profits of the said ship or vessel in all time coming ; and, in general, to do every other thing that I could have done before granting this present vendition, which, with the said vessel or ship, and appurtenances thereof before mentioned, I bind and oblige myself, my heirs, executors and successors, to warrant to be good, valid and sufficient, free, safe and sure to the said C and D, and their foresaids, in all waters, seas, bays, rivers, creeks, passages, havens, harbours,

harbours, roads and ports, within or without this kingdom, from all former alienations, venditions, stays, debts, sums of money, arrestments, bottom-ries, clags, claims, hypothecations, and all other incumbrances whatever that may any ways affect their free possession and use of the said vessel or ship, and appurtenances thereof, at all hands, and against all deadly. And having herewith delivered up a vendition of the said ship by W, ship-master in G, in my favour, dated the day of , together with the British register of the said vessel, I CONSENT to the REGISTRATION hereof, &c. (as on page 285.)

*Vendition of the Share of a Ship.*

I A, CONSIDERING that B has made payment to me of , as the agreed price and value of one third part of the ship the , boats, furniture, and appurtenances thereto belonging, which ship belonged to D, and was by him sold to me, conform to vendition, dated ; THEREFORE I have sold, assigned and disponded, as I do hereby SELL, ASSIGN and DISPONE from me, my heirs, executors and successors, to and in favour of the said B, his heirs or assignees, all and whole one just and equal third part of the said ship, with one third part of the boats, cables, anchors, sails, masts, rigging, and

and other appurtenances belonging to her, together with all right, title, and interest which I have or can claim thereto, in all time coming. Which ship was, in pursuance of an act,—(*Here specify the registry as in the preceding example.*) And I hereby SURROGATE and SUBSTITUTE the said B, and his forefaids, in my full right and place of the premises, with full power to them to sell, use and dispose of the same at pleasure; and to uplift, receive and discharge their proportion of the freight and other profits arising from the said ship, and, in general, to do every thing in relation thereto which I could have done before granting hereof; which vendition I BIND and OBLIGE myself to warrant to the said B, and his forefaids, at all hands, and against all deadly, as law will; AND ALSO, that the said one-third of the said ship and her appurtenances shall be every where free from arrests, rights of bottomry and hypothec, and all other incumbrances whatever, and taxations payable for the same, preceding this date. And having delivered to the said B an extract of the said vendition from the said D to me, I CONSENT, &c. (*as on page 285.*)

*Vendition and Retrocession to a Share of a Ship.*

I A, owner of one-sixth part of the good ship  
or vessel called the \_\_\_\_\_, for the sum of  
\_\_\_\_\_ L.

**L.** , instantly paid to me by B, shipmaster in , have sold, assigned and disposed, as I hereby SELL, ASSIGN and DISPONE to and in favour of the said B, present master of the fore-said ship, his heirs and assignees whomsoever, ALL and WHOLE my said sixth part of the said ship , with a proportional part of her float-boat, furniture and apparelling, which were formerly disposed to me by the said B his vendition, bearing date ; SURROGATING, SUBSTITUTING and RETROCESSING the said B and his forefaids in my full right and place of the premises: AND I hereby not only exoner and discharge the said B and his forefaids of the whole bygone profits and freights of the said ship effeiring to my said part, but I do also give and grant full power to him and his forefaids to intromit with, use and dispose of the said sixth part of the foresaid ship above disposed, with a proportional part of her float-boat, furniture and apparelling, and profits that shall arise thereupon in time coming, and to do every thing thereanent which I could have done myself before granting these presents, which I oblige myself to warrant from my proper facts and deeds, done or to be done, prejudicial hereto; and I have herewith delivered up to the said B the foresaid vendition granted by him to me. And I CONSENT, &c. (*as on p. 285.*)

*Articles*

*Articles and Conditions of Roup of a Ship.*

**ARTICLES and CONDITIONS of Roup and Sale of the ship Cato, lying in the harbour of D, which is to be exposed to public voluntary roup within                     , upon                     , agreeable to repeated advertisements in the public newspapers, or at such other time and place to which the same may be afterwards adjourned and of new advertised, in manner, and upon the conditions following—**

**1mo, THE said ship or brigantine the Cato, with her whole cables, tows, anchors, sails, masts, yards, booms, float-boats, and haill other pertinents and apparel thereunto belonging, as she now lyes in the harbour of D, and belonging to A, master, proprietor of one-fourth part or share thereof; B, proprietor of another fourth part; and C proprietor of the remaining two fourth parts, is to be by the said proprietors put up and exposed to sale at the sum of                     , which sum being once offered, every offer to be made after the first shall exceed the immediate preceding offer in the sum of                     ; and every offerer shall subscribe his offer, and become bound therefore, in terms of these articles.**

**2do, That the time of the roup shall be determined by an half hour sand-glass, to be set up at the exposing of the premises; and the last offerer**

at the outrunning of the glass shall be preferred to the purchase.

3<sup>to</sup>, The purchaser shall be obliged, within days of the roup, to give sufficient security, to the satisfaction of the sellers, to pay the price to them, conform to their several interests in the said vessel, at the term of Martinmas next, with the legal interest thereof from the day of delivery of the said vessel, and a fifth part more of the price, in name of penalty; with this certification, That if the purchaser shall fail to grant security within the time limited as above, he shall not only forfeit his purchase, but be liable in a fifth part more of the price in name of penalty; and in case of more offerers than one, and that the person preferred at the outrunning of the glass fail to grant security in manner above mentioned, it shall be optional to the exposers either to expose the said vessel and pertinents of new, or to hold the next immediate preceding offerer to the purchase at the price offered by him, who shall be obliged, within ten days after notification to him of such failure, not only to give sufficient security in manner and to the effect foresaid, but shall be liable in the like forfeiture and penalty in case of his not doing so, and so forth, through the whole course of the offerers, until these articles are fully implemented. \*

4<sup>to</sup>,

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\* This clause, allowing the exposers to return upon the preceding offerers, is very common in articles of roup, both  
of

4to, That, upon the purchaser's granting security in manner foresaid, the exposers shall grant a vendition in favour of the purchaser, his heirs, executors or assignees, of the foresaid vessel, with her float-boats and whole apparelling aforeaid, bearing receipt of the price, with a clause of absolute warrandice from each of the exposers to the extent of their several interests in the said vessel; and that she shall be free, safe and sure in all waters, seas, passages, harbours and roads within and without this kingdom, from all stays, arrests, clags, claims, bottomries, hypothecations, and all other incumbrances whatsoever that may any ways affect the same, for any cause preceding the date hereof; and shall also contain an assignation to the former venditions and progress of the said ship, with other usual clauses.

5to, At granting the foresaid vendition, the said vessel, with her whole appurtenances, shall be delivered over to the purchaser, conform to an inventory of the same, subscribed of the date of these presents as relative hereto, with which he shall rest himself satisfied without any challenge whatever; and

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of heritable and moveable subjects; but the inconveniences which result from it to those preceding offerers, who may often wish to lay out their money upon other purchases, are so great, and the benefit derived from them to the exposers so inconsiderable, that I would submit, whether the clause might not be better left out, especially in sales, where mercantile people are chiefly concerned.



and in case of any variance arising between the purchaser and the sellers concerning the subject matters of these articles, or the execution or implement hereof, according to the true intent and meaning of these presents, the same is hereby submitted to the amicable determination of F, as sole arbiter; and the purchaser and exposers shall be obliged to subscribe a formal submission to him for that effect.

6to, That M shall be judge of the roup, with full power to determine all questions that may arise concerning the same, either between the exposers and offerers, or between the offerers themselves, and the sellers; and the persons who may offer, shall, by making and signing their several offers, become bound for the performance of the premises to one another, under the penalty of , to be paid by the party failing to the party performing, or willing to perform, over and above performance; and they CONSENT to the REGISTRATION hereof, and of the minutes of roup to follow hereon, in the books of Council and Session, &c. (as on p. 285.)

### *Instrument of Possession.*

At and on board the good ship the Cato, presently lying in the harbour of L, IN PRESENCE of me notary public, and the witnesses subscribing,  
compeared.

appeared A, sole owner of the said ship, and also E, as procurator after mentioned; and there the said A produced to me a bill of sale, dated the day of , made and granted by

B, whereby he, for the causes therein specified, SOLD, ASSIGNED, CONVEYED, and MADE OVER to and in favour of the said A, his heirs, executors or assignees, the hull of the aforesaid ship, with the whole masts, yards, sails, anchors, cables, float-boats, tackle, and appurtenances thereof, to be let out, freighted, sold, and disposed of by him at pleasure; which deed, containing a procuratory or mandate to the said E to deliver possession of the said vessel in manner after mentioned, and sundry other clauses, the said A gave and delivered into my hands, in order that I might read and publish it to the witnesses and others present, which I received and read aloud from beginning to end: After open reading and publishing of which deed, the said A desired and required the said E to put him in possession of the said ship; which being reasonable, the said E, by virtue of his said office, and of the powers committed to him by the foresaid deed, DID GIVE to the said A real and actual possession of the foresaid ship, and whole appurtenances; and that by delivery to him of the mast and rudder of the vessel, as a symbolical delivery of the ship and appurtenances: WHEREUPON, and upon ALL and SUNDRY the premises, the said A asked and took instruments

in the hands of me the said notary public, before and in presence of \_\_\_\_\_ and \_\_\_\_\_, witnesses to the premises specially called and required, and hereto with me subscribing.

*Contract of Sale of Victual.*

IT IS CONTRACTED and AGREED upon, betwixt the Right Honourable A, Earl of A, ON the ONE PART, and B ON the OTHER PART, in manner following: THAT IS TO SAY, the said A, Earl of A, has SOLD, and hereby SELLS and DISPONES to the said B, his heirs and assignees, the number and quantity of 500 bolls good and sufficient bear, 50 bolls more or less, of the usual measure by which the tenants pay their farms; and the number and quantity of 300 bolls good and sufficient oats, 30 bolls more or less, reckoning always 5 firlots of oats to each boll; and which bear and oats are to be of the growth of the Earl's lands in the shire of \_\_\_\_\_: AND FURTHER, the said Earl SELLS and DISPONES to the said B, and his forefaids, the number and quantity of 400 bolls good and sufficient oatmeal, of 9 stones weight each boll, 40 bolls more or less, of the growth of the lordship of \_\_\_\_\_; THE DELIVERY of the greater or lesser quantity of the bear, oats and meal respectively, being always in the option of the said Earl, and not of the buyer;

AND THAT YEARLY, and each year, for the space of SEVEN YEARS and CROPS, beginning with the last crop and year : AND WHICH several QUANTITIES of bear, oats and meal, the said A, Earl of A, BINDS and OBLIGES himself, and his heirs and successors, to deliver, or cause to be delivered, yearly, to the said B, or to his forefaids, or to any one having his or their order, to receive the same, and that as follows ; viz. the foresaid quantity of bear and oats on the shore and harbour of , and the foresaid quantity of meal at the towns of , or , or any other place of the like distance from , in the option of the said B, and that at any time between the 1st day of February and 1st day of June, as the said B and his forefaids shall desire, upon reasonable premonition given by him or them to the Earl's factors, and that under the penalty of four shillings Sterling for each undelivered boll of the foresaid quantity hereby sold, EXCEPTING in the case of a sterility, when no penalty shall be exigible for undelivered bolls ; and beginning the first year's delivery of the foresaid victual, of crop , so far as not already delivered betwixt the date hereof and the 1st of June next, and so to continue betwixt the 1st of February and 1st of June yearly thereafter, during the remaining years of this contract : FOR WHICH CAUSES, and on the OTHER PART, the said B has become bound, and, by these presents,

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sents, he BINDS and OBLIGES him, and his heirs and executors, to make payment to the said A, Earl of A, and his heirs, executors or assignees, and that yearly, and each year, during the foresaid space of seven years, of the sum of twelve shillings and four pence Sterling for each boll of the said bear, oats and oatmeal hereby sold, and that at the term of Martinmas, and within the city of Edinburgh, yearly, after delivery; beginning the first year's payment, for the price of crop 1770, at the term of Martinmas next, 1771, and so forth yearly thereafter at the said term of Martinmas, and within the city of Edinburgh, during the continuance of the present contract, with a fifth part more than the said price, of liquidate expense, in case of failure, and the legal interest of the said price from and after the said term of payment, as long as the same shall remain unpaid: AND FURTHER, the said B binds and obliges him and his forebids to send ships or vessels yearly to the said places of delivery, where they are to remain for the space of eight work-weather lye-days, for receiving the said victual on board; and to free and relieve the said Earl and his forebids of any shore-dues, or other charges, of whatever kind, payable to the officers of the customs, or others, at putting the same on board: And the said B hereby DECLARES, that any receipt or receipts for the said victual, to be granted yearly by the masters of the said vessels, or others entrusted by the said

B

B or his forefaids, to receive the faid victual and meal, fhall be as binding on the faid B and his forefaids, for afcertaining the quantity delivered, as if the faid receipts had been granted by him or them: AND BOTH PARTIES BIND and OBLIGE themfelves, their heirs and fucceffors, to perform their refpective parts of the premifes, and that under the penalty of 500l. Sterling, to be paid by the party failing to the party performing, or willing to perform, over and above performance: AND they CONSENT to the REGISTRATION hereof (*in common form.*)

*Contract of Sale of Growing Timber.*

It is contracted and agreed upon betwixt A B, D D, W S, and J M, commissioners named and appointed by the Right Honourable W, Earl of B, for managing his affairs, agreeably to commiffion granted by his Lordfhip, with confent of the faid A B, his fole curator, to them, or any two of them, who are declared a fufficient quorum, containing a power to fell his woods growing on his lands and eftate of , and to enter into contracts of fale for the fame, dated , and recorded , ON the ONE PART, and J S, brother to A S, of , and the faid A S, for himfelf, and as cautioner, furety and full debtor, for and with his faid brother,

Z 4

ther, ON the OTHER PART, in manner, and to the effect following : THAT IS TO SAY, the said commissioners, in name of their constituent, sell and dispone to the said J S, and his heirs and assignees, the whole trees, young and old, great and small, presently growing in that part of the wood of , called the , within the following bounds (*here the boundaries were described*), and within which bounds the parties compute and agree, that there are 6698 fir trees ; and the said commissioners, in name of their said constituent, do hereby sell and dispone to the said J S, and his forefaids, the number and quantity of 302 more fir trees, of the largest and best that can be fixed on by the said J S, out of that parcel growing immediately to the south of the other parcel above described, betwixt that and the place called , which, with the 6698 trees, estimated by the parties to grow on the forefaid haugh of , within the bounds above described, the said J S hereby accepts of as the full number of 7000 trees, the quantity now purchased by him : WHICH number of 7000 fir trees are to be felled, cut down, manufactured and carried away, on the expense of the said J S, and that within the space of six years from and after the date hereof ; which space is hereby allowed to the said J S, for cutting down, manufacturing and disposing of the forefaid quantity of timber hereby sold ; DECLARING that, during the  
said

saïd space, it shall not be lawful to the saïd commissioners, or their saïd constituent, to sell or dispose of any other of his fir-woods of , excepting only fallen trees, blown down by the violence of storms, or backgoing trees in the park of , which the saïd commissioners shall be at liberty to dispose of to the best advantage; and without prejudice to the cutting of wood, for the proper use of the saïd Earl or his tenants: And, for the further encouragement of the saïd J S, the saïd commissioners hereby allow him and his foresaïds the use of the saw-mill, and whole machinery thereof, which is to be delivered to him under inventory, and to be restored by him agreeably thereto, at the expiry of the saïd space of six years, in the same state and condition in which he receives them. AND it is hereby FURTHER DECLARED, that the saïd J S shall have liberty to build and erect, on his own charges, another saw-mill, for the easier manufacturing of the saïd timber, and to make aqueducts thereto, the same being always done without damage to the Earl's contiguous arable land; AS ALSO, that the saïd J S, and those employed under him, shall have at all times free ish and entry to the saïd woods, by all the usual roads and passages leading thereto. FOR WHICH CAUSES, AND ON THE OTHER PART, the saïd J S not only hereby accepts of the foresaïd number of 7000 trees sold to him by the saïd commissioners, and obliges himself to cut down



down and manufacture the same, upon his own expense, within the said six years ; BUT ALSO, the said J S, and the said A S, as cautioner, surety and full debtor for and with him, BIND and OBLIGE them, jointly and severally, and their heirs and executors, to make payment to the said Earl, or to his said commissioners, or to their cashier, for the Earl's behoof, or to his Lordship's factor for the time, or to the Earl's heirs or assignees, of the sum of SEVEN HUNDRED pounds Sterling, as the agreed price and value of the said 7000 fir trees, and that at the terms following, viz. (*here the terms of payment were expressed*), with a fifth part more of each of the said term's payment of liquidate expenses in case of failure, together with the interest of each term's payment, from the terms respectively above written, during the not-payment thereof. AND FURTHER, in regard the foresaid 302 trees, sold to the said J S for making up his full number, grow amongst a large parcel of wood not thereby sold ; THEREFORE the said J S OBLIGES himself to fix on, cut and carry off these 302 trees at one time, that is, in about the space of one week, at the sight of the Earl's factor, or of any person to be named by him, and in the way least prejudicial to the other growing wood. AND LASTLY, the said commissioners BIND and OBLIGE the said W, Earl of B, their constituent, and the said J S and A S BIND and OBLIGE themselves, jointly and severally,

verally, and their foresaids, to implement and fulfil their respective parts of the premises, under the penalty of 100l. Sterling, to be paid by the party failing, to the party observing, or willing to observe the same, and that over and above performance: AND BOTH PARTIES consent to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on six days charge, and all necessary execution; may pass on a decree to be interponed hereto in common form. And for that purpose they CONSTITUTE

THEIR PROCURATORS,

&c. In witness whereof, &c.

*Contract of Sale of Salmon. \**

It is CONTRACTED and AGREED upon betwixt A, ON the ONE PART, and B ON the OTHER PART, in manner following: THAT IS TO SAY, the said A hereby SELLS and DISPONES, and BINDS and OBLIGES himself to DELIVER to the said B, his heirs or assignees, or to his or their order, ALL the SALMON and GRILSES belonging to the said A, that shall be caught and cured for him on the river of , in the county of , for the full space of seven years, commencing from

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\* For a lease of a salmon-fishing, see vol. II. p. 444.

from February , notwithstanding the dates hereof ; AND THAT the said salmon and grilfes shall be good and sufficient, and well packed and cured fish ; and that they shall be delivered to the said B, or his forefaids, when packed, yearly, at the several cerf-houses, as usual, under the penalty of per barrel ; and the said Earl's factors and carriers shall receive and take charge of the salt, casks and stores that shall be sent by the said B, for the use of the said fishing, from time to time, and shall give receipts for the same ; which receipts shall be sufficient documents for the quantities so delivered, and shall be binding on the said A : FOR WHICH CAUSES, and ON the OTHER PART, the said B BINDS and OBLIGES him, his heirs and successors, to content and pay to the said A, his heirs or assignees, the sum of Sterling for each tierce or barrel of salmon or grilfes that shall be caught and cured in the said river, and delivered and prepared, and ready to be delivered to the said B, or his forefaids, yearly, AND THAT at the term of Whitsunday following, after the delivery of the said fish, as aforesaid. AND FURTHER, the said B BINDS and OBLIGES him, and his forefaids, to provide and deliver yearly, on his own expense, to the said A's carriers, a sufficient quantity of foreign salt, to the extent of half a boll of salt, for curing each tierce or barrel of salmon or grilfes ; and to provide and furnish casks, hoops and

and cooperage for the whole fish that shall be caught and cured as above ; and to send the salt, casks and coopers, on his own risk and expense, to the different cerf-houses belonging to the said A in the said river ; and to receive the whole salmon and grilfes, so caught and cured on the said river yearly, and to carry off the same in the proper seasons, at his own risk and expense, from the different cerf-houses : AND it is hereby DECLARED, that the receipts of the coopers, appointed yearly by the said B, or his forefaids, for packing the said salmon, shall be a sufficient document for ascertaining the quantity of salmon and grilfes to be delivered yearly to the said B and his forefaids. AND FURTHER, the said A BINDS and OBLIGES him and his forefaids, that none of the salt sent by the said B to the different cerf-houses, shall be applied to any other use than the curing of salmon ; and, should any of it be used otherwise, the said A obliges himself and his forefaids, to indemnify the said B for any loss he may sustain by such misapplication. AND BOTH PARTIES BIND and OBLIGE themselves, and their forefaids, to implement their respective parts of the premises to each other, under the penalty of 100l. Sterling, to be paid by the party failing to the party performing, or willing to perform, and that over and above performance. AND both parties CONSENT to the REGISTRATION hereof, &c. (*as in the preceding form.*)

*Sale*

*Sale of Bank Stock.*

The transference of bank stock is made, either by the act of the proprietor himself, under a warrant from the Court of Directors of the bank ; or, on the death of the proprietor, it is made by the accountant to the bank under a similar authority.

When the sale is made by the proprietor himself, it is stated to the Court of Directors, in order that the transfer of stock to the purchaser may be made under their authority ; and this is necessary, from the right of retention competent to the bank, until every debt due by the proprietor be paid off. When the Court are satisfied that the proprietor does not stand indebted to the bank, or are satisfied of his responsibility for any debts in which he may stand bound, they authorise the transfer, which is made in this form.

*Transfer in the Books of the Bank to a Purchaser of Stock.*

‘ I A, hereby sell, assign and transfer to B,  
‘ 10,000l. Scots, being my interest in the stock  
‘ of

‘ of the Governor and Company of the bank of  
‘ , with all dividends of profits that  
‘ shall be ordered thereupon.

*This is witnessed by one of the Directors.*

‘ A. ’

*Acceptance by the Purchaser.*

‘ I B, above designed, accept of the above  
‘ stock, with all the conditions which the said  
‘ A, above designed, is or ought to be under, as  
‘ proprietor of the said stock.

‘ B. ’

Where, again, the transfer is made in favour of an heir, he must state to the Court of Directors the nature of his title. Where there is no conveyance, there must be a confirmation of the whole stock; or, where the deceased has conveyed to his heir his bank stock, no confirmation is required. On considering the claim, the Court address a warrant to the accountant of the bank for making the transfer; and under this warrant the accountant makes the following entry in the books.

*Transfer.*

*Transfer to an Heir.*

The warrant is entered ; and, subjoined, the accountant writes,—‘ By virtue of the above warrant, I do assign and transfer to the above-mentioned C, executor of the deceased B, 10,000l. Scots, being the said B’s interest in the stock of the Governor and Company of the Bank of  
‘ , with all dividends of profits that  
‘ are or shall be ordered thereupon.’ This is signed by the accountant.

*Acceptance by the Heir.*

‘ I C, above designed, hereby accept of the  
‘ above stock, with all the conditions which the  
‘ above B was or ought to have been under before his death.

‘ C.’

I shall subjoin the form of those deeds, which may be necessary for managing this species of property.

*Factory*

*Factory for uplifting, or disposing of, Bank Shares  
by an Executor.*

I C, executor-dative *qua* nearest in kin, de-  
cerned and confirmed to B before the Commissary  
of , as appears from a confirmed testament;  
expede before the said Commissary on the ;  
CONSIDERING that the said deceased B had, at the  
time of his death, shares of the capital stock  
of the Bank of , which now belong to  
me, as his executor confirmed, in manner above  
written; and it being necessary for me to appoint  
a proper person to obtain the said shares transfer-  
red in my name, and to draw the dividends which  
are at present due, or may hereafter become due  
thereupon, and also to sell and dispose thereof;  
AND having full confidence in D for executing  
this trust, I THEREFORE NOMINATE and APPOINT  
the said D to be my FACTOR and COMMISSIONER,  
for the purposes after mentioned, GIVING, GRANT-  
ING and COMMITTING full power, warrant and  
commission to him to obtain the said  
shares of the capital stock of the said bank, trans-  
ferred, in my name, in the books of the said bank,  
and for me, and in my name, to accept of the  
said transfer, and to bind me in all the prestations  
and obligations which, by the practice and regu-  
lations of the said bank, are usual and common  
in such cases, which shall be as effectual and bind-  
ing



ing on me, as if the same were subscribed by myself. AND FURTHER, I hereby authorise and empower the said D to UPLIFT, RECEIVE and DISCHARGE the dividends at present due, or which may hereafter become due, upon the said shares of capital stock, and to grant receipts and discharges thereof, which shall be as valid and sufficient as if granted by myself: AND I also hereby GRANT full power, warrant and commission, to the said D, to SELL and DISPOSE of the said shares of the capital stock of the said bank, together or separately, either by public or private sale, as shall appear to the said D to be most for my advantage; AND, for that purpose, for me, and in my name, to MAKE, GRANT and SUBSCRIBE a TRANSFER or TRANSFERS of the said shares so to be sold, in favour of the purchaser or purchasers thereof; WHICH transfer or transfers shall be as valid and sufficient as if the same were granted and signed by myself, PROMISING to hold the whole premises firm and stable, without revocation; but declaring always, that the said D shall be bound and obliged, as, by acceptation hereof, he binds and obliges himself, his heirs, executors and successors, to make just count, reckoning and payment to me, my heirs and successors, of his intromissions in virtue hereof, he being always allowed retention of all necessary expenses, and of a reasonable gratification for his trouble; BUT with which obligation to account, those transacting with  
the

the said D shall have no concern whatever : And I consent to the registration hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation ; and for that purpose CONSTITUTE

MY PROCURATORS,

&c. In witness whereof, &c.

*Articles and Conditions of Roup of Bank Stock.*

ARTICLES and CONDITIONS of the roup and sale of six shares, or six thousand pounds Scots, of the capital stock of the Governor and Company of the Bank of Scotland, fully paid up, which are to be exposed to sale by public roup, within , on Monday the day of , by D, factor and commissioner for C, the proprietor of the said shares, and, as such, empowered by him to sell and dispose thereof in the manner hereby agreed on, in virtue of a faculty and commission granted by the said C to the said D, of date , and recorded

*First,* That the said six shares, with the right to the dividend of profits on the same since , and in all time coming, shall be set up to sale at 774l. Sterling, that is, at the rate of 129l. for each share.

A 2 2

*Second,*

*Second,* That the said sum of 774l. Sterling being once offered, every offerer thereafter shall bid at least 1l. 10s. above the preceding offer; and the highest offerer at the outrunning of a sandglass, to be set up by the Judge of the roup, shall be preferred to the purchase.

*Third,* That the purchaser shall, within forty-eight hours after the roup, pay, or give sufficient security, to the satisfaction of the said D, for the price offered, and the interest thereof, from this day of ; and in case of his failing so to do, he shall forfeit and be obliged to pay to the said D 5l. Sterling for each 100l. offered, and shall, over and above, in the option of the said D, forfeit his right to the purchase, which shall be again at the disposal of the said D.

*Fourth,* That upon paying the price, or finding security as aforesaid, the said D shall transfer the said six shares, and profits thereof aforesaid, in the bank books, to and in favour of the said purchaser, on his expense.

*Fifth,* That E shall be Judge of the roup, and have power to determine all questions concerning the same.

*And lastly,* The said D, the exposé, and the purchaser, by his after subscription hereof, consent to the registration hereof, and of the minutes and acts of roup to follow hereupon, in the books of Council and Session, or others competent, to have the strength of a decree interponed hereto, that  
letters

letters of horning, on six days' charge, and all other necessary execution, may be directed thereon, in form as effects; and for that purpose, they  
**CONSTITUTE**

**THEIR PROCURATORS, &c.** IN  
**WITNESS** whereof, these presents, written on this  
 and the preceding page of stamped paper, by  
 , are subscribed by the said D, at E-  
 dinburgh, the                      day of                      , before  
 these witnesses, E and F.

F, witness.

D.

G, witness.

*Minutes of Roup, written on the Back of the  
 Articles.*

**AT EDINBURGH,** the                      day of                      ,  
 and within                      , in terms of the ar-  
 ticles of roup above written, and previous ad-  
 vertisements; the Judge of the roup having  
 ordered the articles of roup to be read over,  
 and the same being done, and a sandglass set  
 up by the Judge of the roup, the said six  
 shares of the capital stock of the said bank  
 were exposed to sale, in terms of the preced-  
 ing articles, at the foresaid upset price of  
 774l. Sterling.                      E.

**APPEARED H,** who offered for the said six shares  
 the sum of, &c. (*here the offers will be set down,  
 and signed by the offerers*).

A 2 3

And

And the said H. being the last and highest offerer at the outrunning of the said sandglass, he was preferred to the purchase of the said six shares of the capital stock of the said bank, by the Judge of the roup; AND the said PURCHASER does hereby ENACT, BIND and OBLIGE himself, his heirs and successors, to pay the said price offered by him, or to find caution and security therefor, with interest and penalty, in terms of the preceding articles and conditions of sale; and to implement the whole other conditions prestable by him as purchaser, and that under the penalty within specified; AND he CONSENTS to the REGISTRATION hereof, alongst with the foregoing articles of roup, in the books of Council and Session, or other Judges' books competent, that letters of horning, on six days' charge, and all other execution necessary, may follow thereon, in form as effeirs; and for that purpose, he CONSTITUTES

his PROCURATORS, &c. In witness whereof, these presents, written by . . . , ARE SUBSCRIBED by the said purchaser, and by the Judge of the roup, place and day foresaid, in presence of these witnesses, F and G.

F, witness.

H.

G, witness,

E.

The transfer of this stock takes place in favour of the purchaser in common form.

## 2. LOCATION.

Leases, which form the material part of this title, have been already considered as connected with heritable rights. There remain, therefore, one or two forms only of this deed to be given here.

## Charter Party.

At \_\_\_\_\_ It is CONTRACTED AND  
 AGREED betwixt Messrs B and Company, mer-  
 chants \_\_\_\_\_, ON THE ONE PART, and  
 A, owner and master of the ship \_\_\_\_\_ of  
 L, ON THE OTHER PART, in manner following:  
 THAT IS TO SAY, the said A, in consideration of  
 the freight after mentioned, stipulated and agreed  
 upon betwixt the said parties contractors, hath  
 freighted, and by these presents FREIGHTS and  
 LETTS his said ship the \_\_\_\_\_ of L, to the  
 said B and Company, to be employed in a voyage  
 from L, where she now lyes, to P, and thence to  
 return to L; for which purpose, the said A obliges  
 himself to have his said ship cleared, tight, well  
 found, and in good order, and every thing neces-  
 sary for the above voyage, against the \_\_\_\_\_ day of  
 \_\_\_\_\_, and that he shall continue \_\_\_\_\_ days  
 A a 4 \_\_\_\_\_ after

after having so prepared his vessel in the said port of L, in order to take in such loading as the said Messrs B and Company shall direct; and he becomes bound to sail with the said ship, wind and weather serving, after having completed her loading; and to direct his course for the said port of P, where he is to deliver his loading, to the order of the said Messrs B and Company. **AS ALSO,** the said A becomes bound to continue days in the said port of P, in order to take on board a loading there, by the direction of the said Company, their factors or correspondents at that port; and to return with the said ship and cargo to the said port of L, by the first favourable weather, after completing his homeward bound loading at the said port of P; and being returned to the said port of L, he shall continue there days for unloading his said cargo; at the expiry of which space, and the homeward cargo safely unloaded and delivered, the voyage shall then be held completed, and the let of the said ship shall terminate. **AND,** for the better performing of the said voyage, the said A BINDS and OBLIGES himself to have his said ship sufficiently wind and water tight, under and above, well provided with anchors, cables, sails, tight float-boat, a skilful pilot and company, victuals, and other necessities for such voyage, and to keep her in the like good repair during the continuance thereof; **AS ALSO,** to grant bills of lading for the goods he shall receive

ceive on board ; and to suffer none of the goods to be damaged or embezzled through his own fault, or that of his ship or company, sea-hazard only excepted. And ON THE OTHER PART, the said Messrs B and Company BIND and OBLIGE themselves, and their heirs, executors and successors, to PAY to the said A, his heirs, executors or assignees, the sum of , of freight for his said ship, at the terms and by the proportions following, viz. one half thereof at the said port of P, within ten days after his arrival there, and the other half of the said sum at the port of L, within three days after his return there, with the legal interest of these moieties from the terms when they are payable, until they are paid. AND in case the said A is detained at the said ports of L and P longer than the spaces above mentioned, through the said Messrs B and Company their delaying to load or unload the said vessel, or taking more time to do so than above mentioned, then the said Messrs B and Company become bound to pay to the said A, or his forefairs, the sum of for each day he is detained above the spaces already mentioned ; AND that besides the freight above stipulated, and at the same places and terms when and where the said moieties are payable. AND FINALLY, both parties become bound to perform the premises to one another, under the penalty of , to be paid by the party failing to the party performing, or willing to do so,



so, over and above performance. AND they consent, &c.

*Charter-Party in the English Form.*

THIS CHARTER-PARTY OF AFFREIGHTMENT, indented, made and agreed upon, the            day of           , in the year of our Lord           , between A, of           , master of the good ship or vessel called the           , of the burden of            tons, or thereabout, now lying at anchor in the harbour of           , OF THE ONE PART, and B of           , merchant, OF THE OTHER PART, WITNESSETH; That the said A hath granted, and doth hereby grant, and to freight-let, unto the said B, the said ship or vessel called the            for the voyage hereunder-mentioned: And doth hereby, for himself, his executors and administrators, covenant, promise and agree to and with the said B, his executors and assigns, That on or before the            day of           , next ensuing, the said ship shall be ready, and fitted and provided in all respects, for such a voyage, and shall receive and take such goods as the said B shall load on board her outwards, and shall sail directly unto           ; and within            after her arrival there, or sooner, shall unload and deliver all her said outward lading, unto the factors, agents or assigns of the said B; and there also shall receive

receive and take on board her all such (*intention here the kinds of goods*) as the said B, his factors, agents or assigns shall load, or tender to be laden, on board the said ship, as much as can be stowed and carried in her, over and above her victuals, tackle and apparel; and being so laden, shall depart thence for , and return directly unto the harbour of ; and within days after her arrival there, shall make a true and full discharge and delivery of her said homeward lading unto the said B, his executors or assigns respectively, and end and finish her said intended voyage, wind and weather, the danger of the seas, and the restraint of Princes, always excepted! AND the said B, for himself, his executors and administrators, doth hereby covenant, promise and agree to and with the said A, his executors and assigns, that he the said B, his executors, factors, agents, or assigns, shall and will unload his outward goods, and fully load the said ship, at afore- said, with , as much as she can stow and carry in her, above her victuals, tackle and apparel; and receive and discharge the same from on board her, at , within the respective times before limited; and shall also well and truly pay, or cause to be paid, unto the said A, his executors or assigns, freight for every ton of , which shall be so laden on board the said ship at , and delivered to the said B, his executors, factors, agents or assigns at , as aforesaid, at and after

after the rate of                      pounds, of lawful money of Great Britain, per ton, for every ton of                      , and proportionably for a less or greater quantity than a ton, accounting                      weight neat to a ton ; one half part thereof within                      days after a true and full discharge and delivery, and the other half part within                      months next after such discharge, with                      per ton for primage ; and shall also pay average as accustomed, together with two third parts of all port-charges to grow due during the said voyage, the remaining third part thereof to be paid by the said A. And it is hereby agreed, by and between the said parties to these presents, That all and whatsoever goods with which the said B shall load outwards the said ship, are and shall be carried and transported to the said                      , freight free. And for the true performance of all and every the covenants aforesaid, each of the said parties bindeth himself, his heirs, executors and administrators, unto the other of them, his heirs, executors and administrators, in the penal sum of                      (*double the value of the freight.*) IN WITNESS whereof, the said parties have hereunto set their hands and seals, the day and year first above written,

**Sealed and delivered, being**

first duly stamped, in pre-  
 sence of D.  
 E.

A, seat.  
B, seat.

### 3. De:

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### 3. DEPOSITION.

It may happen that the titles of a small purchase, or an heritable security, shall be allowed to remain in the hands of the seller or borrower until the price be paid, or the loan fully completed. In either case, it would be proper to deposit them with a third party; in which case, an inventory may be made out, with a docquet subjoined, to the following effect, and copies deposited with both parties.

#### *Docquet.*

The titles contained in the above inventory have been by A, above designed, DEPOSITED with me for his behoof, until the price of the subjects contained in the above disposition by him to B be paid; in which event, they are to be held by me for behoof of the said B: And THEREFORE I ACKNOWLEDGE that I HOLD the said disposition and title-deeds to the effect fore-said; AND whenever the said B, his heirs or assignees, shall produce to me the said A's discharge of the said price, with an order from him to deliver up the said writings, I hereby BIND and OBLIGE

LIGE me, my heirs and successors, to deliver the same to him or his forefaids, as their proper writs and evidents. IN WITNESS whereof, &c.

Or a letter may be given by the feller, in this form.

*Letter of Deposition by the Seller.*

SIR,

I acknowledge that you have purchased from me a house, &c. &c. at the price of ; the disposition to which in your favour, has been made out and executed by me: And as it has been agreed betwixt us, that the said disposition and title-deeds shall remain with me undelivered until the said price be paid up; THEREFORE, I HEREBY ACKNOWLEDGE that they remain in my hands undelivered; and I OBLIGE me, my heirs and successors, on payment of the said price by you, your heirs or assignees, to deliver up the same to you or them, to be kept as your own titles in all time thereafter. I am, Sir, &c.

A.

To B. (design him.)

*Deed*

*Deed of Deposition.*

I A. of C, CONSIDERING that I, by a disposition of date \_\_\_\_\_, for the causes therein expressed, DISPONED, DEVISED, and ENTAILED, my estate and lands of D to myself in liferent, and to B, only son of D, and the issue male of his body; whom failing, to the other substitutes therein nominated, in fee, under certain faculties and reservations, guarded by irritant and resolutive clauses, and, amongst others, that if any of the substitutes therein named shall possess the said entailed estate upon any other right or title than the foresaid disposition and tailzie, or shall quarrel the right thereby given to the institute, or any of the substitutes, or their issue, upon any other ground or reason than his or their having incurred and contravened the irritancies contained in the foresaid entail; THEN, and in that case, such substitute or substitutes offering to possess or quarrel in manner foresaid, and their descendants, shall *ipso facto* lose and forfeit all right and title which they shall or might have had in the said entailed estate; and the same shall thereby be devolved upon the next heir of tailzie, substitute to the contravener; by which entail, full power, faculty and liberty is reserved to me, at any time in my life, to alter, innovate or infringe the same, by a writ signed by me, or to adject any other clauses

or

or conditions that I shall think proper, and which are declared to be as sufficient and valid as if inserted and engrossed *in gremio* of the said entail ; as the same, of the date foresaid, more fully bears : AND WHEREAS, by another disposition of this date, I have likewise disposed, given and devised the said estate to and in favour of F, and his heirs therein expressed, with a reservation of my own life, and a faculty to alter, innovate, and adjoin clauses in manner therein and above mentioned, as the said disposition, of the date foresaid, likewise bears : AND SEEING it is my true meaning and design, that the deed of entail first above narrated, made in favour of myself in life, and of the said B and the other institutes above mentioned in fee, shall stand good and subsist ; having made the other deed, wherein the said F is instituted, only for the following purpose ; viz. that if the right given by the first deed to the foresaid B, and the heirs of his body, shall be quarrelled and reduced, in so far as relates to the said B and the heirs of his body ; then, and in that case, it shall be in the power of the said B, or of the heirs of his body, to deliver the said second deed to the said F, or to his forefathers, or to destroy it, as he or they shall incline, to the effect of carrying the said estate to the remaining heirs of tailzie named in the first deed of entail : OR, should the said entail be totally reduced, then it shall be in the power of the said B, or his forefathers,

saids, to deliver the said second deed to the said F, or to destroy the same, and so admit my heirs at law to the succession of the said estate, at his or their pleasure: THEREFORE I, with and under the reservation after expressed, hereby deposit both of the said deeds with the said B, and authorise him to recover the same, at any time, out of any other hands into which they may happen to be; and I ordain the disposition and entail first above narrated, made and devised to myself in life, and to the said B and the issue of his body, and the other substitutes therein named, in fee, to stand in full force, strength and effect, in its whole tenor, clauses and contents, unless it is, and shall be found, contrary to law: But if the same shall be quarrelled, found illegal, and voided, in so far as relates to the succession of the said B and the heirs of his body; then, and in that case, I hereby, in virtue of the faculties reserved to me in manner foresaid, give full power, authority and commission to the said B, and, in default of him, to the heirs of his body and their issue, who would have succeeded, had the said entail subsisted, to deliver to the said F, and his foresaids, the disposition last above narrated, wherein he is named institute, in case the said B, or his foresaids, shall think proper so to do; or they may destroy the same, and so open up the succession under the said entail to those heirs of entail substituted to the said B and the heirs of his body: BUT DECLARING always, that the said



disposition last above narrated shall never be a delivered evident, or have any effect for transmitting the property of the said estate, until the same be voluntarily, without any compulsion whatever, given and delivered by the said B or his forefairs, in manner above expressed: **DECLARING LIKEWAYS**, that if the entail first above narrated, shall happen to be entirely voided, then, and in that case, it shall be in the power of the said B, and his forefairs, to deliver the said second disposition to the said F, or his forefairs, or to destroy the same, and to allow my heir at law to succeed to me in the said estate in the ordinary form: **AND** if the said B or his forefairs shall think proper to deliver the second disposition in favour of the said F and his forefairs; then, and in that case, the first entail is hereby revoked, infringed, voided and annulled, as if it never had been made or granted; reserving always to me the faculties contained in both these dispositions, where it is declared lawful for me to alter, change, innovate or infringe the entail or order of succession, by a writing signed by me in manner therein expressed; and to alter, take out, and adject such conditions and clauses as I shall think proper; which power and faculties still are, and shall be competent to me, notwithstanding hereof. **AND I CONSENT** to the **REGISTRATION** hereof, for preservation, &c.

*Articles of Deposition.*

THESE articles, entered into betwixt A, commissioner nominated and appointed by B, conform to commission, dated , and registered in the books of Council and Session, the days of , *upon the one part*, and C, as taking burden on him for D, *upon the other part*, witness, THAT WHEREAS, in the process and action depending before the Court of Session for ranking the creditors, and for sale of the estates of E, a petition was presented for F deceased, brother-german of the said B, praying the Court to grant warrant on the factor and purchasers of the estates belonging to the said B, for payment to the petitioner of 1000l. Sterling, contained in a decret of adjudication therein mentioned, led against E upon the 10th day of May , and interest of the said sum since the date of the said adjudication ; which sum and interest amounted, as at the term of Candlemas last, to the sum of 1400l. Sterling : AND WHEREAS, after certain steps of procedure upon the said petition, the Court, upon the 15th day of June last, granted warrant to, and decerned and ordained the several purchasers of the said E's estates, and factor after-mentioned, to make payment to the said B, as nearest and lawful heir of the said deceased F, petitioner, his only brother, of the respective sums of

B b 2

money

money after specified ; viz. G, purchaser of the first lot of the said lands of E, of the sum of 500l. Sterling ; H, purchaser of lot second, of the sum of 500l. Sterling ; P, purchaser of part of the estate of E, of the sum of 200l. Sterling, and on K the factor, of the sum of 100l. Sterling ; making, in whole, the sum of 1300l. Sterling, and that against the term of Candlemas next, conform to M the accountant's scheme of allocation in process : AND WHEREAS the said D has made a claim against the said B for two third parts of the foresaid sum of                      Sterling, and both parties are equally interested that the said sum should be drawn from the factor and purchasers of the estates of E, in consequence of the foresaid warrant, and deposited in manner after-mentioned : AND WHEREAS the said B having, upon the 5th day of May last, obtained himself served and retoured nearest and lawful heir in general to the said deceased F his brother ; and having produced the retour of his said service in process, the said act and warrant has now been extracted : THEREFORE, it is hereby agreed, *Primo*, That the said A, commissioner for the said B, shall uplift and receive from the purchaser of the said E's estates, and the factor thereon, the several sums above specified, and any interest that may become due on the same, and shall deposit two thirds thereof in the hands of the Royal Bank of Scotland, at such rate of interest as may be got there-fore,

fore, on a note of the said Bank. *Secundo*, That the bond, note, or other security to be taken for the money so deposited, shall be conceived in favour of the said C, or of any other commissioner to be named and appointed by the said B, and, failing such nomination, to the said B himself, and his heirs or assignees : But always with and under the provisions and conditions specified in this article, to which the said bond, note, or other security shall specially refer, and which the said Royal Bank shall, by the said bond, note, or other security, be obliged to see implemented, viz. that before the said A, or any other commissioner nominated and appointed by the said B, or the said B himself, or his forefairs, shall be entitled to uplift the money so deposited, they shall be obliged to give three months previous notice of their intention to uplift the same, to the said D, or to his heirs or assignees, or to the said C, or to any other person who shall be appointed for the time to act for the said D or his forefairs, and that under form of instrument, in order that the said D or his forefairs, or the person so authorised to act, may have an opportunity of taking such steps as he shall judge necessary for securing the claim made by the said D against the said B for said monies : But, notwithstanding hereof, it shall be competent to the said A, or other commissioner nominated by the said B, or to the said B himself, or his forefairs, with concurrence of

the said D or his forefaids, or of the said C, or other person authorised to act for them, to uplift the said monies so deposited, at any time after the term of payment of the said bond, note, or other security, although no previous intimation should be given. *Tertio*, In case the said D shall ultimately be found to have right to two thirds, or to any other proportion of the foresaid debt originally due by the said E, or to have a claim against the said B for the same, that the said money, or that proportion thereof to which the said D is found to have right, by decree of a proper court, or of an arbiter, shall be understood to have been originally deposited on the account, and on the risk of the said D; and if the same shall then continue deposited in the hands of the said Royal Bank, the bank note, or other security taken for the same, shall be transferred to him accordingly, and he shall be obliged to accept of such transference in full of all claim competent to him against the said B, on account of the money drawn in virtue of the foresaid act and warrant. *Quarto*, It is hereby provided and declared, that the deposite of the money shall noways hurt or prejudice the claims of the said B and D, or the interests which they may severally pretend to have in the said monies, but the said claims and interests shall be decided and determined, in the same way and manner as if the said monies had remained

mained in the hands of the said purchasers and factor, the said depositation being intended for the mutual accommodation of both parties, and no ways to hurt or alter the nature of their several pretensions. *Quinto*, In case the purchasers or factor shall not be ready to pay up the fore-said sums, or any part thereof, it shall nevertheless be in the power of the said A, as commissioner for the said B, to discharge them thereof, and to grant the necessary conveyances in their favour, upon their granting bond, note, or other sufficient security for the said sums in favour of the said A, or of any other commissioner to be named and appointed by the said B, and, failing such nomination, in favour of the said B himself, and his heirs or assignees ; but always with and under the provisions and conditions specified in the second article of these presents, to which the said bond, note, or other security, shall specially refer, and which the grantor shall, by such bond, note, or other security, be obliged to see implemented, the monies thereby due being considered as deposited, in the mean time, in terms of the articles before agreed on ; and, so soon as the said monies are paid by the factor or purchasers, they shall be deposited in the hands of the said Royal Bank, upon a security to be taken as aforesaid, and under the provisions before specified : And both parties consent to the registration, &c. (*as on p. 285.*)

## 4. PLEDGE.

*Bond of Bottomry.*

To all to whom these presents shall come : I A, owner and master of the good ship called the Jean, of the burthen of two hundred tons or thereabouts, now riding at anchor in the harbour of N, and bound for O. WHEREAS I the said A am at this time necessitated to take up, upon the adventure of the said ship, the sum of 100l. Sterling, for setting her forth to sea, and furnishing her with provisions and necessaries for the said voyage, which sum of 100l. D hath, at my request, lent and supplied me with, at the rate of 20l. money foresaid for the said 100l. during the said voyage : Now, KNOW YE, that I the said A do, by these presents, for myself, my heirs, executors and administrators, covenant and grant to and with the said D, that the said ship shall, with the first fair wind after the day of , depart from N, and shall, as wind and weather serve, proceed in her voyage to O ; and having there tarried till , shall return from thence, and shall, as wind and weather serve, sail directly back to N, and finish her said voyage ; AND I the said A do, \* for myself,

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\* It is the circumstance of the loan being hazarded on the ship's arrival, that differences this security from that which

self, my executors and administrators, covenant and grant to and with the said D, his executors and administrators, by these presents, that I the said A, at the time of executing and delivery of these presents, am true and lawful owner and master of the said ship, and have power and authority to charge and engage the same, in manner before and underwritten ; and that the said ship shall, at all times after the said voyage, be liable and chargeable for the payment of the said 120l., according to the true intent and meaning of these presents ; and that the said ship is free and clear from all former bargains and sales, titles, charges, and incumbrances whatever : AND lastly, it is hereby declared and agreed, by and between the said parties to these presents, that in case the said ship shall be lost, miscarry, or be cast away, before her next arrival in the port of N from the said intended voyage, then the payment of the said 120l. shall not be demanded, or be recoverable

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which we are next to consider. Therefore, though usually the ship alone is bound for the money, as in the above example, yet sometimes the borrower adjects a personal obligation against himself, in the following terms. ‘ And I  
‘ the said A do hereby bind and oblige myself, my heirs,  
‘ executors and successors, to content and repay to the said  
‘ D, his heirs, executors or assignees, the sum of 120l. Sterling, within ten days next after the safe arrival of the said  
‘ ship in the said port of N from the foresaid intended voyage ; and also for myself, ’ &c. as above.



coverable by the said D, his executors, administrators or assignees, but shall cease and determine, and the loss thereof be wholly borne and sustained by the said D, his executors and administrators; and that thence, and from thenceforth, every act, matter and thing herein contained on the part and behoof of me the said A, shall be void, any thing herein contained notwithstanding. And I consent to the registration, &c.

*Right in Security over a Ship.*

I A, late owner of the ship E, CONSIDERING that, at the sale of the said ship, after she was run down on a voyage from M to the Frith of Forth, I purchased the hull, materials and cables, remaining of the said ship, and that B, upon the , lent me 100l. in order to enable me to repair the said vessel; which I accordingly got done, and brought her to the harbour of H, where she now lies. And it being most just and reasonable that the said B should have security upon the said ship, for payment to him of the foresaid sum of 100l., and annualrents that may fall due thereon; THEREFORE, I bind and oblige myself, and my heirs, executors and successors, to content and repay to the said B, his heirs, executors and assignees, the aforesaid sum of 100l. Sterling, with the legal interest



SUBSTITUTING the said B, and his forefaids, in my full right of the said ship and appurtenances, with power to the said B, and his forefaids, to let out, freight and navigate the said ship, sell, use, and dispose of her for payment and security as said is, at their pleasure, and generally every thing appertaining the premises to use and exercise, as fully and freely in all respects, as I could have done before granting these presents. Which right and security, together with the foresaid ship's furniture and appurtenances, I oblige myself, my heirs and successors, to warrant, acquit and defend, to be free, safe and sure to the said B and his forefaids, in all seas, roads, harbours, creeks, ports, friths and others, as well within as without this kingdom, from all stays, arrests, hypothecations, bottomries, clags, claims and incumbrances whatsoever, with which the said ship and pertinents may be affected, for any cause or occasion whatever preceding the date hereof, at all hands, and against all deadly, as law will: DECLARING always, that these presents, and the said ship E, with her furniture and appurtenances, are and shall be redeemable by myself and my forefaids, upon payment to the said B and his aforefaid, of the foresaid sum of , and interest due thereon for the time. And I hereby empower G, as procurator for me, to pass and put the said B and his forefaids in the possession of the said ship E, and her furniture, boats, and appurtenances, by delivering to him, or his certain

certain attorney in his name, bearer hereof, of the mast and rudder of the said vessel, and all other usual symbols; but redeemable always in manner foresaid. And I consent, &c.

*Contract of Copartnery betwixt Two Merchants.*

IT IS CONTRACTED, AGREED, and ENDED, between the parties following, viz. A, merchant in Edinburgh, ON THE ONE PART, and B, merchant there, ON THE OTHER PART, in manner following: THAT IS TO SAY, The said parties, in consideration of the mutual trust and confidence which they repose in each other, HAVE AGREED, and do by these presents AGREE, to be copartners in carrying on a joint trade and business in Edinburgh, under the firm of A, B & Co., and that for the space of seven years from and after this date; during which space, the said A and B do severally oblige themselves not to carry on any other or separate trade or business whatsoever, either by themselves, or by others on their account, nor to enter into any copartnery without the previous consent of the other partner had and obtained thereto: PROVIDING always, that it shall be in the power of either of the said partners to withdraw and dissolve the copartnership at the end of the fifth year of the said copartnership, upon the party so withdrawing making proper intimation, in presence of

a notary-public and witnesses, to the other party, of his intention so to do, six months preceding the expiry of the said fifth year: AND for the better regulating and carrying on of the said trade and business, the said parties have RESOLVED and AGREED upon the following articles: 1<sup>mo</sup>, That their capital stock shall consist of                      Sterling; that is, cash or goods to the value of Sterling shall be put into the stock by each party; and if either party shall put goods into the stock of the Company exceeding that value, he shall be declared a creditor to the Company for the value of such surplus, and draw legal interest for such surplus until he is repaid the same by the Company: DECLARING hereby, that the parties shall not only make up just and exact inventories of the goods which shall compose the stock of the Company, but of the overplus which shall be put into the Company by either of the partners as aforesaid; and which inventories, so made up, shall be signed by both parties, and a copy thereof delivered to each party; which goods and merchandises contained in such inventories, with what further goods and merchandise shall be afterwards commissioned and purchased by the Company, are to be sold and disposed of for the benefit and advantage of the partners; and the profits arising therefrom shall be divided equally between the partners; and whatever goods or merchandise shall be purchased by the said partners for the use of the copartnership,

copartnership, they reciprocally oblige themselves to relieve each other of the one half of the prices thereof, and of the loss thereupon, if any be sustained by them during the continuance of the said copartnership. 2do, That all bills, contracts, accounts, and other writings relating to the said trade, shall be taken and given under the foresaid firm and designation of A, B & Co.; and any of the partners so subscribing shall bind the other partner; but no writing, which is not so subscribed, shall bind them as a Company. 3tio, That no prior or personal debt of any of the partners shall bind the other. 4to, The said parties shall keep, or cause to be kept, regular and distinct books, containing all and every part of the affairs and transactions of the said joint trade; and they shall post, enter, and bring forward, or cause to be posted, entered, and brought forward, the books of the Company from time to time; and also keep a copy-book of letters, into which shall be copied all letters relating to the affairs of the Company; and the Company's books shall be brought to a just and true balance at least once every twelve months, and that at the 1st day of April; and then the profits or loss arising from the said trade shall be shared by each partner, according to the proportion aforesaid. 5to, The said parties oblige themselves severally, and their heirs and successors, to repay, each to the other, a due proportion of whatever sum or sums shall be advanced by either of them for

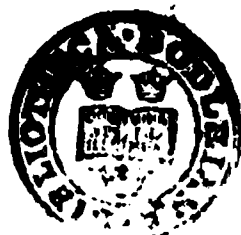
for carrying on the said trade, over and above their respective proportions of the said capital stock, with the legal interest thereof from the time of advance until the same is paid. 6<sup>to</sup>, In case it shall be thought proper by the said partners that one of them should go to London, or other places, for buying goods for the Company, it is hereby agreed that they shall go by turns, the said A having the first option; and the expense of their journey in going and returning shall be borne by the Company. 7<sup>mo</sup>, It is also agreed, that the cash arising from sales, or from payments to the said copartnership, with the bills and other instructions of debt, shall be kept by one of them for the time; but that they shall change that office, the one with the other, every three months during the space of the copartnership. 8<sup>vo</sup>, It is agreed, that the shop on the South Bridge, presently occupied by, and belonging to the said A, shall be occupied by the said Company during the subsistence of the copartnership; the rent whereof, during that period, is hereby declared to be Sterling *per annum*. 9<sup>no</sup>, That, upon the dissolution of the said copartnership, the books of the Company are to be brought to a just and true balance; their goods are to be inventoried, and a full and complete state of their affairs made up; which goods are, with all convenient speed, to be converted into cash; and the proceeds thereof are, in the first place, to be applied for extinguishing the debts due by the  
1 Company,

Company, and the residue to be equally divided between the said partners. AND in case, after the expiry of twelve months, to be computed from the time of the dissolution of the copartnery, any of the debts due to the Company shall happen to be outstanding, or any of the goods remain undisposed of, then it shall be optional to either of the said partners to put a value upon such goods or debts, and to make an offer of an assignment of his share thereof to the other partner, upon payment of, or giving good security for, his share of the said price; which offer the other partner shall accept of within                      days after the same shall be made to him; or, otherwise, he shall be obliged to assign and make over to the other partner, at the value put upon them, his share of the said debts and goods, upon receiving payment or good security for his proportion thereof. 10mo, In case either of the said parties shall happen to die during the currency of this present contract, the surviving partner shall have it in his power to take and keep the whole stock of goods which shall be upon hand, belonging to the copartnery at the time, at 5 *per cent.* below the prime cost thereof, upon paying, or finding security to pay, the deceased partner's interest therein, as the same shall be ascertained by a balance of the Company books brought up to the death of that partner; and which partner's interest shall be due to those in his right, at the respective terms following;



viz. the just and equal half thereof at the expiry of        months; and the other half of the same at the end of        months, to be computed from the time of the partner's deceasing; with interest of the said moieties, from and after the respective terms of payment thereof, during the not payment of the same. And in case the surviving partner shall not incline to take the goods of the Company at the rate foresaid, the same shall be exposed to sale by public roup, at the sight, and by the direction, of the surviving partner, and the representatives of the partner deceased; and the produce shall be applied, first, for extinguishing the debts of the Company, and the remainder equally divided. *11mo*, The said parties agree, that if any difference arise betwixt them anent this copartnery, or the true intent and meaning of these presents, to SUBMIT and REFER the same to the determination of two arbiters, one to be named by each of the said partners, or of any overfman who shall be named by the said arbiters, in case of variance between them, whose decreet-arbitral to be pronounced shall be final and binding upon both parties. And, *lastly*, The said A and B oblige themselves severally, and their heirs, executors and successors, to perform the whole premises each to the other, under the penalty of 500l. Sterling, over and above performance. AND they CONSENT, &c.

*Contract*

*Contract betwixt Corn Merchants.*

IT IS CONTRACTED and AGREED betwixt the parties following, viz. A ON THE FIRST PART, H ON THE SECOND PART, and G UPON THE THIRD PART, in manner, and to the effect following: THAT IS TO SAY, the saids parties, having a mutual confidence in each other, have agreed to be jointly concerned, for the space of one year from this date, in the trade of buying and selling all kinds of corns and grain; AND, for the better carrying on the said joint trade, they have AGREED on the following articles, to wit, 1<sup>mo</sup>, That 1000l. Sterling shall be the capital stock of the said joint trade, and which sum is to be raised by procuring credit to that extent with the Bank of Scotland; for which sum of 1000l. Sterling, or such parts thereof as shall be found necessary, the said A is from time to time to grant his bill to the said bank, on their advancing the same; and for payment of which bills, the said parties are jointly and severally to be bound to the said bank. 2<sup>do</sup>, That whatever part of the said sum of 1000l. Sterling shall be taken up from the said bank on bills, as aforesaid, by the said A, shall be applied solely by him in purchasing, for behoof of the said joint concern, such kinds of corns and grain as the parties, or any two of them, shall direct; and if it shall,

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during

during the course of the said year, appear to the said parties, that a further or larger sum than the said 1000l. Sterling shall be necessary for carrying on the said joint trade, then, and in that case, one-third part of the said further or larger sum shall be advanced by each party, and shall be applied by the said A as above, for the sole use of the said concern, in purchasing grain as aforesaid; of all which purchases, and sums employed therein, the said A is to keep regular and exact accounts, and from time to time to advise the other parties thereof. 3<sup>th</sup>, That each of the said parties is to do his or their utmost endeavours to promote the interest of the aforesaid joint trade; and for that purpose, none of them are to have any concern, in the victual trade, in company with any other parties; but reserving nevertheless to the parties to deal therein on their own private account; and the said A is from time to time to send to the said H and G, or to their order, such parts and quantities of the said grain, purchased by him as aforesaid, to be by them disposed of for the joint account of the concern, as they shall from time to time judge convenient. 4<sup>th</sup>, That the said H and G shall respectively insure to the concern the amount of such sales as they shall make; and in the space of four months after the said sales are completed, or sooner, if in cash, shall pay in the neat proceeds thereof to the said bank, for retiring the said A's bills granted to them

them as aforesaid. *5to*, That the said A shall be allowed, at the expense of the concern, three-pence per boll, for corn-commission, on all the purchases which he shall make for the joint account; and the said H and G are also to be allowed, at the expense of the said concern, six-pence per boll for commission and insurance, on all the sales which they shall make for the joint account of the parties; of which sales the said A is from time to time to be advised by them. *6to*, That within            days from the last date hereof, the said A shall find sufficient security, to the satisfaction of the other parties, that what money shall be impressed by them into his hands, in the manner above-mentioned, or that he shall receive from the said bank on his bills to them, as aforesaid, shall be by him truly laid out and employed in purchasing grain and otherwise, for the use and behoof of the said joint concern. *7mo*, That of the profits arising from the said concern, one-third is to be drawn by each of the parties; and all charges and expenses naturally and incidentally attending the said joint trade, are to be sustained by the said parties also equally by third parts; and immediately after expiry of the aforesaid term of twelve months, the accounts of the said concern are to be adjusted and settled by and among the said parties; and in case any difference shall arise among them relative to the said accounts, or from the said joint trade, or in regard to the true in-

tent and meaning of these presents, the same shall be submitted and referred to three persons, one to be chosen by each party, whose award, or that of any two of them, shall be final and binding upon all concerned. And, *lastly*, The said parties respectively BIND and OBLIGE themselves, their heirs and successors, to perform their respective parts of the premises to each other, under the penalty of 30l. Sterling, to be paid by each party failing to the party or parties performing, or willing to perform the same, over and above performance. AND they CONSENT, &c. *as on p. 285.*

*Contract of Copartnery betwixt two Surgeons.*

IT IS AGREED and ENDED between the parties following, viz. A and B, both surgeons in Edinburgh, in manner following: THAT IS TO SAY, the said parties, having confidence in each other, have agreed to be copartners in carrying on their trade and business of surgery on the following conditions; *1mo*, That they shall be joint copartners in carrying on business as surgeons in Edinburgh, for the space of seven years from this date; and shall continue the copartnery as long thereafter as shall be agreeable to the parties; it being always in the power of either of them, at any time after that period, to dissolve the copartnery, upon giving six months notice to the other party,

party, under form of instrument, previous to the time at which such party chooses that the copartnery shall be dissolved. 2do, That the firm of the said copartnery shall be A *and* B ; and either of the parties subscribing the said firm shall bind the Company. 3tio, That the stock of medicines shall be supplied equally ; and the whole expenses of the shop, coal, candle, &c. and all the expenses attending the business, are to be equally borne by the said partners ; and all sums that may be received by them, or either of them, in name of apprentice-fees, charges for medicines, fees of attendance, or otherwise, is to be divided between them equally ; with the exception of fees of operations, which shall be exclusively the right of the partner by whom the operation is performed. 4to, That the parties shall keep regular and distinct account-books, in which all the transactions of the Company shall be regularly entered ; and which books shall be brought to a fair balance yearly, in the month of March, or as soon thereafter as may be convenient for the parties ; and then the profits arising from their practice shall be paid and divided between them equally. 5to, That the Company shall be liable for no debts, excepting such as shall be regularly entered in their account-books. 6to, That the said partners shall not carry on, nor be concerned in any line of their profession (operations excepted), during the present copartnery, on the private account of

either of them. 7<sup>mo</sup>, That upon the expiry of this copartnery, or in case of the death of either of the partners before that period, it is agreed, that a full and complete state of the Company's affairs shall be made up, and the debts due to them recovered as soon as possible ; and after payment of the debts due by the Company, the debts due to the Company, with the stock of cash, medicines, and other effects belonging to the Company, shall be equally divided between the partners, or between the surviving partner and the executors of either of them who may happen to die, and that by arbiters to be mutually chosen. 8<sup>vo</sup>, That if any differences shall arise concerning the said copartnery business, or any of the articles hereof, such differences shall be, and are hereby submitted and referred to the final determination and decreet-arbitral of E and F, arbiters mutually chosen by the said partners, or of an oversman to be named by the said arbiters, in case of varying in opinion ; and it is agreed that the decreet-arbitral, to be pronounced by the said arbiters or oversman, shall be binding upon all parties having interest : AND LASTLY, the said partners BIND and OBLIGE themselves, and their heirs, executors and successors respectively, to fulfil and perform the whole of these articles to each other, under the penalty of 100l. Sterling, to be paid by the party failing to the party observing, or willing to observe

observe the same, over and above performance.  
AND they CONSENT, &c.

*Indenture betwixt a Cloth-Merchant and his Ap-  
prentice.*

IT IS CONTRACTED, AGREED and finally ENDED betwixt the parties following, viz. A, merchant, burghess and guild-brother of Edinburgh, ON THE ONE PART, and B, second son of C, with the special advice and consent of his said father, and his said father, as taking burden, and as cautioner and surety for and with his said son, ON THE OTHER PART, in manner under written : THAT IS TO SAY, the said B, with advice and consent foresaid, hereby becomes bound apprentice and servant to the said A, in his art, employment and profession of merchandizing ; and that for the full term and space of five years from and after the first day of June current, when the said apprenticeship is declared to have commenced, notwithstanding the date hereof. During which space, the said B, with consent foresaid, BINDS and OBLIGES himself to serve and obey his said master honestly and faithfully, night and day, holiday and week day, in all things lawful and honest ; and that he shall at no time absent himself from his service, without his master's special leave and consent had and obtained for that effect ;



fect; and that he shall not reveal the secrets of his master's business, nor hear nor see his master's hurt or skaith, without giving him information thereof, and preventing it to the utmost of his power: Or, if he does in the contrary, the said B hereby OBLIGES himself to serve two days for each day's absence, after the expiration of these indentures, and to pay two pennies for each penny's loss his said master shall sustain or incur through his neglect or default. AND it is hereby DECLARED, that if, at any time during the currency of this indenture, the said B shall be convicted of being accessory to any tumults, riots or insurrections within the city of Edinburgh, or its liberties, he shall *ipso facto* amit and lose any benefit or freedom he expects, and would otherwise be entitled to, in virtue hereof. FOR WHICH CAUSES, and on the other part, (and in consideration of the sum of                      Sterling of apprentice-fee, instantly paid by the said C for his said son, whereof the said A hereby grants the receipt, and discharges all concerned), the said A BINDS and OBLIGES himself, to teach, learn and instruct the said B, his apprentice, in the whole parts and branches of his said art and profession of merchandising, so far as he himself knows the same, and has occasion to practise, or his said apprentice has capacity to conceive and learn. AND FURTHER, that he shall pay to his said apprentice the sum of                      Sterling, for his service during  
ing

ing the fourth year of his apprenticeship, and the sum of                      Sterling for his services during the last year of the said apprenticeship, and that at the expiry of each of these years, with a fifth part more of each of these payments of liquidate penalty, in case of failure, and the legal interest thereof during the not-payment. And the said parties BIND and OBLIGE themselves to perform the premises *hinc inde* to each other, under the penalty of 20l. Sterling, to be paid by the party failing to the party observing, or willing to observe the same, over and above performance. And both parties CONSENT to the REGISTRATION, &c.

***Indenture between a Merchant and his Apprentice.***

It is contracted and agreed upon between the parties following, viz. A, merchant in Edinburgh, ON THE ONE PART, and B, youngest son of the deceased C, with consent of D, his mother, widow of the said C, and E and F, his curators, and the said D, E, and F, as cautioners, and taking burden upon them for the said B, ON THE OTHER PART, in manner following; That is to say, the said B, with consent foresaid, hereby becomes bound apprentice and servant to the said A, in his occupation of merchant, and that for the space of five years from and after the term of  
Martinmas

Martinmas last, which is hereby declared to be the term of entry to his said apprenticeship ; during which space the said B, and the saids D, E, and F, as cautioners for him, BIND and OBLIGE themselves, and their heirs and successors, conjunctly and severally, that the said B shall faithfully, diligently and honestly, attend his said master's service both by night and by day, and shall not absent himself therefrom, without leave asked and given, and that he shall not hear or see his master's skaith either in his name or goods, without hindering and preventing the same to the utmost of his power, and timeously acquainting his master therewith ; and that he shall not divulge any secrets or affairs wherewith his master may entrust him : AND FURTHER, the said B and his said cautioners BIND and OBLIGE themselves and their foresaids, conjunctly and severally, to repeat and refund to the said A any loss, damage or expense, which he may happen to incur or sustain through the omissions or default of the said B, at any time during his apprenticeship : And the said B and his said curators having instantly made payment to the said A of the sum of 50l. Sterling of apprentice fee, he holds himself well contented and satisfied therewith, and exoners and discharges the said B and his said curators of the same, obliging him and his heirs to warrant this discharge at all hands, and against all mortals. FOR WHICH CAUSES, and on the other part, the said A binds and

and

and obliges himself to teach, learn and instruct the said B, his apprentice, in all the branches of the mercantile business carried on by him, during the foresaid space, and to conceal no part thereof from him in so far as he knows, and the said B is capable to learn : And the said B binds and obliges himself and his foresaids, to warrant, free, relieve, harmless and skaithless keep his said cautioners of all cost, damage, interest and expense which they, or any of them, may anyways sustain or be put to, by being bound and obliged for him in manner foresaid : And, lastly, both parties BIND and OBLIGE themselves and their foresaids to implement and fulfil the premises to each other, *hinc inde*, under the penalty of 50l., to be paid by the party failing, to the party performing or willing to perform, over and above performance : And both parties CONSENT to the REGISTRATION, &c.

*Indenture betwixt a Tradesman, a Member of Mary's Chapel, and his Apprentice.*

IT IS CONTRACTED, AGREED and ENDED, between A, burghers of Edinburgh, UPON THE ONE PART, and B, with the advice and consent of C, and the said C for himself, and as cautioner, and otherwise bound in manner underwritten, UPON THE OTHER PART, in manner following : That is to say, The said B hath become, and hereby becomes

comes bound apprentice and servant to the said A, in his art and craft of \_\_\_\_\_, and that for the space of six years, next and immediately following the date of these presents; during which time he BINDS and OBLIGES himself to be a faithful and obedient servant to his said master, and that he shall not reveal his master's secrets, nor conceal his skaithe, but shall advertise him thereof, and stop the same to the utmost of his power; and that he shall not absent himself from his said service, without leave obtained from his master; and if he fails in punctual attendance, he shall make two days service after the expiration of the term of his apprenticeship (in the same station in which he serves while it lasts) for each day's absence during that time; and in case the said apprentice shall, at any time during the space aforesaid, commit adultery or fornication, he obliges himself to make three years service to his said master after the expiration hereof, in the same station he serves in during the same, conform to the ordinance made thereanent: And the said C hereby becomes bound and obliged, conjunctly and severally with the said apprentice, for his lawful and obedient service during the space and in the terms foresaid, and for his fulfilling the other points hereof on his part, and for all that shall or may follow upon his failing in any part thereof: AND the said apprentice binds and obliges himself to free, relieve, and skaitheless keep his said cautioner of all cost, skaithe, damage

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damage and expense which he may sustain through or by reason of his said cautionry in any sort : And the said C further BINDS and OBLIGES himself, his heirs and executors, to furnish the said B with work-tools and with abulziements to his body, both linen and woollen, and other necessities, and washing, during the whole space of his apprenticeship. FOR WHICH CAUSES (and for the sum of            Sterling, instantly advanced, paid and delivered by the said C, in name of apprentice-fee with the said B to the said A, his master, whereof he grants the receipt, and exonerates and discharges all concerned thereof), the said A BINDS and OBLIGES himself to teach and instruct his said apprentice in his art and craft of            , in so far as he knows and daily occupies the same himself ; and that he shall not hide or conceal from him any part thereof, but shall do his utmost diligence to cause him learn, conceive and understand the same in so far as he is capable ; and also to entertain and sustain his said apprentice in meat, drink and bedding sufficiently, as effects, during the space foresaid : AND LIKEWISE to cause book his said apprentice in the Guild Court-books of Edinburgh, within forty days after the date hereof, under the penalties contained in the act of council thereanent. PROVIDED ALWAYS, and it is declared, That if the said apprentice shall be accessory to any mob or insurrection whatever within the city of Edinburgh, and be convicted thereof,

thereof; or if the said master shall grant any back-bond to his said apprentice, agreeing to any less time of service than the space of six years, or shall assign these presents to any other person, or if the said apprentice shall serve any other master before the expiration of the time aforesaid (unless the consent of the Incorporations of Mary's Chapel be first obtained to such back-bond, assignation, or service respectively), then, and in either of the said cases, the said apprentice shall amit and tyne the liberty and freedom expected by him in virtue of his service under this indenture, conform to the acts and ordinances respecting these sundry particulars, one of which is by the Town Council of Edinburgh, and the other two by said Incorporations of Mary's Chapel: AND, FINALLY, the parties hereunto BIND and OBLIGE themselves, their heirs and executors, to fulfil and perform their respective part of the premises, *hinc inde*, to each other, under the penalty of \_\_\_\_\_, of liquidate expenses, to be paid by the party failing, to the party observing or willing to observe, over and above performance. AND they CONSENT, &c.

*Indenture between a Shipmaster and his  
Apprentice.*

IT IS CONTRACTED and AGREED upon between  
A, owner of the ship \_\_\_\_\_, ON THE ONE  
PART,

PART, and B son to D, with the special advice and consent of his said father, ON THE OTHER PART, in manner following; THAT IS TO SAY, the said B hereby becomes bound as an apprentice and servant to the said A on board the said ship, or any other ship whereof he is, or may hereafter be master, and that for the whole time and space of four years from the date hereof; during which space, the said B with consent foresaid, binds and obliges himself, faithfully, dutifully, and honestly, to attend his said master's service by night and by day, holiday and work-day, in all things lawful and honest, and shall not absent or withdraw himself therefrom, without liberty asked and given; and if he do on the contrary, that he shall serve two days for each day's absence; and that he shall content and pay to his said master two pennies for each penny's loss he shall suffer or sustain through his default: That he shall abstain and refrain from all vicious company and gaming, excess in drinking, night-walking, and debauchery, and from every other idle exercise that may in any ways divert him from his said master's service: Neither shall he be anyways accessory to mobs or tumults: That he shall no sooner see his master's prejudice in his goods or good name, than he shall immediately discover and make the same known to him, and prevent the same to the utmost of his power, and shall in all respects so carry and demean himself towards his said master as becomes a dutiful and



obedient servant : And, for his faithful performance of the whole premises, the said D, his father, hereby becomes bound as his cautioner and security. FOR THE WHICH CAUSES, and ON THE OTHER PART, the said A hereby BINDS and OBLIGES himself to teach, or to cause teach and instruct the said B in navigation and seafaring business, in so far as he knows or practises the same, or as the said B can learn and uptake the same ; and to aliment and entertain him at bed and board, at sea and on shore, decently and honestly as becomes him during the currency hereof: AND FURTHER, to pay to him the following sums to keep him in clothes, viz. 4l. for the first year, 6l. for the second year, 7l. for the third year, and 9l. for the last year. AND, FINALLY, both parties BIND and OBLIGE them to perform the premises, *hinc inde*, to each other, under the penalty of 10l. Sterling, to be paid by the party failing, to the party observing or willing to observe, over and above performance. And they CONSENT to the REGISTRATION hereof in the books of Council and Session, or others competent, that letters of horning on six days charge, and all other execution needful may be directed hereon in form as effects ; and thereto constitute

their PROCURATORS. IN WITNESS whereof, &c.

*Affidavit*

*Affidavit to obtain a Protection for a Ship  
Apprentice from being Impressed.*

At Leith, the twenty-seventh day of May,  
one thousand seven hundred and ninety-  
years.

IN presence of F, baillie of Leith, compeared  
B, son of D, mason in G, parish thereof, and  
county of Edinburgh, who being sworn, depones,  
That he hath bound himself apprentice to serve  
at sea by indenture, of date                   , to A,  
shipmaster in Leith, in the said county of Edin-  
burgh, master, and part owner of the ship  
                  ; and that he, this deponent, never  
served at sea before the date of the said inden-  
ture. And depones, That the said indenture was  
signed, and in all respects completed and perfect-  
ed at the time on which it is dated. And this  
he declares to be truth, as he shall answer to  
God.

(Signed)                   B.

And the above designed A, of Leith, in the  
county of Edinburgh aforesaid, maketh oath, and  
depones, That he is master and part owner of  
the ship                   , and that the aforesaid B hath  
bound himself an apprentice to serve at sea by  
indenture, as mentioned in the foregoing affida-  
vit, to this deponent; and that this deponent

really believes the said B never served at sea before the date of the said indenture. And deposes, That the said indenture was signed, and in all respects completed and perfected at the time it is dated. And this is truth, as he shall answer to God.

(Signed) A.

Sworn before me, the

day of (Signed) O.

*Contract of Copartnery of a Banking Company.*

WE the persons afternamed and designed, and hereunto subscribing, HAVE RESOLVED to establish a Banking Company in the town of M: THAT IS TO SAY, we have, in consideration of the mutual trust and confidence we repose in one another, AGREED, as we do by these presents COVENANT and AGREE, to unite and join ourselves into a Company for carrying on a joint trade and business of BANKING, in issuing notes of hand, payable at our office in M, lending money on cash-accounts, bills, and permanent securities, and in purchasing bills of exchange, and discounting of bills and notes, under the firm and designation of A B & Co., and that for the space of twenty-one years from and after the day of , which is hereby declared to be the time of the commencement of the said Company; during which

which space, or so long as the said Company shall not be dissolved in consequence of the articles herein after mentioned, WE the said parties faithfully PROMISE and OBLIGE ourselves, severally, to promote and advance the interest and advantage of the Company to the utmost of our power: AND in order to raise a capital stock for carrying on this undertaking, we do hereby agree, that the capital stock of the said Company shall be the sum of                      Sterling, to be divided into shares of 100l. Sterling each; which capital stock is to be raised by the persons, and in manner after mentioned: THAT IS TO SAY,—(*Here insert the names and designations of the parties*); And the said persons do hereby BIND and OBLIGE themselves severally, each for himself, to pay into the hands of the said G, merchant in                      , hereby named and appointed cashier to the Company, or to his successors in that office, the said sums which they have severally bound themselves to pay, of which the sum of 40l. Sterling for each 100l. Sterling to be paid by them on or before the first day of April next, and to pay to him the remainder thereof at such times, and by such proportions, as shall be hereafter fixed and appointed by a general meeting of the Company, and to be intimated to the partners who are not present thereat, by a letter from the cashier, with a fifth part more of liquidate expenses in case of failure, and with annual rent for the said sum of 40l. Ster-

ling, and remainder of the said 100l., or share, from the time the same falls to be paid, till actual payment thereof; and in case any partner or partners shall fail to make payment of the said sums in the terms above mentioned, then it shall be in the power of the directors of the Company for the time being, either to order process to be carried on at the instance of the cashier against the different partners for the payment, or to FIND and DECLARE that such partners shall not be further concerned in the said Company, and shall be incapable to hold stock therein: And, in this last case, the directors shall, in their option, either assume new partners in place of the deficient partners, and convey the shares to the persons so assumed, and return to the deficient partners the money they may have paid in, if any; or to expose to public sale the shares of the deficient partners, after the same shall have been publicly advertised through the town of M three times, and the advertisement stuck up in the Company's office ten days before the sale; the Company being obliged to pay to them the neat proceeds of the sale, after deduction of the expense of the said roup, and other expense that the Company may sustain by such deficiency; and on returning the money as aforesaid, or accounting for the neat proceeds of the sale as above mentioned, or tender of either by the cashier of the said Company, the stock of such deficient partner, and profits thereon,

thereon, are hereby declared free, exonerated and discharged of all claim competent to the said deficient members, any manner of way: AND the said parties hereunto, do hereby, for themselves and their successors, in prosecution of their agreement, and for the better carrying on and regulating the management of the Company's affairs, and for preventing, as much as possible, all questions and debates in relation to the said partnership, become bound to one another, and subject themselves, and their shares and interest in the stock and profits of the Company, to the following other articles, conditions, burdens, and obligations; viz. *First*, THAT no person shall be allowed to hold, by himself, or any person in trust for him, any more than six shares, nor less than one share of the Company's stock; Declaring always, that it shall be in the power of a general meeting of the Company, at any time after the said                      day of                      , to permit and allow the partners to hold further shares in the Company's stock, but so as no partner shall be entitled to hold a greater number of shares than twelve; and declaring, that until such allowance or permission from a general meeting, no partner shall be entitled to hold more stock than the shares above mentioned, or which he has become bound to advance as aforesaid. *Second*, That no Company, as such, shall be entitled to hold any share or shares in the Company's stock.

*Third*, That no partner in this Company shall, while he remains such, hold any share of the stock of any other banking company in M, or within Scotland, or be agent for any banking company in Scotland, directly or indirectly : AND IN CASE it shall be discovered that any partner shall hold any share in the stock of such other banking company, or be agent for any banking company, such partner shall forfeit his stock in this Company, and whole profits thereof ; which shall belong, and is hereby declared to belong to, and be vested in, the other partners of the Company, without any consideration, and the same is hereby conveyed absolutely to them ; EXCEPTING ALWAYS the case where the share of any stock shall devolve upon any partner of this Company by will or by succession ; in which case, the partner shall be at liberty to purge the foresaid forfeiture, by sale thereof, within three months after the right thereto shall have accrued to him, but not afterwards ; AND EXCEPTING ALSO, the case of the Company's stock devolving, as aforesaid, on any person who is not a partner of this Company, but who is a partner in another Banking Company as aforesaid ; in which case, such persons shall be bound, within three months after the right shall have accrued to him as aforesaid, to dispose of the stock in such other banking company, and obtain the shares in this Company's stock transferred to him ; and in case of his failing so to do,  
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he shall forfeit his interest in the stock of this Company, which, in that case, is hereby conveyed to, and declared to be vested in, the other partners of this Company, without any consideration to be paid therefor; reserving always power to general meetings of the partners wholly to dispense with, or to mitigate the effect of this according to circumstances, as they in their discretion shall think proper. *Fourth*, That the number of the directors for conducting the business of the Company, is to consist of thirteen, to be chosen by general meetings of the partners in manner herein mentioned, of whom seven shall in all cases be a quorum, subject to the restraints herein after specified; and at the first meeting of the directors, they shall choose a *preses* to continue in that office till the first Monday of                   ; and at the future election of directors, they shall choose a *preses* to continue in that office till the first Monday of                    next ensuing; and in the absence of the *preses*, the directors present shall choose one *pro tempore* in his place; and the *preses* shall in all cases have, besides his own vote, a casting vote in case of equality; and, in case of the death, or of the disqualification of any of the directors, by the diminution of their stock or otherways, the remaining directors shall have power, if they think proper, to call a meeting of the partners, by letter from the cashier to the partners, who may supply the vacancy till the first



first general meeting thereafter ; providing always, that, in the mean time, the remaining directors, or the said quorum of them, shall have power to act. And in case of the death or disqualification of the preses chosen by the directors, the other directors shall have power, at their meeting next thereafter, to choose a preses in his room. *Fifth*, That the directors shall have the ordering, directing, and superintending of the management of the Company's business, and are to give the necessary directions to the cashier and other officers to be employed by them in conducting the Company's business ; and shall have power to make such rules and regulations as they may judge necessary and proper for carrying on the business, provided such rules and regulations are not inconsistent with any of the articles of this contract, or the articles that may hereafter be settled and established by general meetings of the Company ; which rules and regulations to be made by the directors, shall be recorded in their sederunt book, to lye in the Company's office : That the directors shall also fix the salaries of the cashier, and other officers to be employed in the Company's service, and augment or diminish the same as they shall see proper ; and shall also have power to suspend or dismiss the said cashier, or other officers, where they shall see just cause therefore, and to appoint other persons in their place ; and that the directors shall meet on Monday every week,

week, or oftener, as occasion shall require, and shall keep a regular docquet-book of all their proceedings, wherein shall be marked the directors present at each meeting; and the proceedings of each meeting shall be signed by the preses, which shall in all cases be sufficient evidence thereof; it being understood, that, previous to every extraordinary meeting of the directors, notice of such meeting shall be given by the cashier to the directors; and at these meetings, or so often as the directors shall judge it necessary, they shall examine the books of the Company, and the Company's cash; and that the directors may, when they think proper, call general meetings of the Company, by missive letters from the cashier to the partners, notifying the business which is to be under consideration, ten days at least before such meeting. *Sixth*, That the cashier and other officers to be elected by the general meeting, as is after mentioned, or to be appointed by the directors as aforesaid, shall continue in their respective employments during the pleasure of the Company and their directors, and shall grant security for the faithful discharge of their respective offices, and for accounting, as follows; viz. the cashier to the extent of 2000l. Sterling; the first clerk to the extent of 1000l. Sterling; and the second clerk to the extent of 500l. Sterling; and the said cashier and other officers shall bestow their whole time and skill in the Company's affairs.

affairs. *Seventh*, That all promissory notes to be issued by the Company, shall be subscribed by their cashier and one of the clerks of the said Company, or any other person to be hereafter appointed by the directors, by a minute of their sederunt-book, to be duly notified to the public by advertisements in the Edinburgh newspapers; and that all bonds, bills, promissory notes, indorsements of bills and promissory notes, contracts, and other writings relating to the Company's affairs, and letters, shall be taken to, and given and signed by, the cashier, or other person to be appointed and advertised as aforesaid, and shall bind the Company to all intents and purposes, the Company being obliged to relieve the persons subscribing the said notes and other writings. *Eighth*, That no credit to be given by the directors upon a cash-account shall exceed the sum of 1500l. Sterling on one security; and that for a credit on a cash-account for the sum of 500l. Sterling and under, there shall not be less than three persons bound; and for all sums above that, there shall be four persons bound; providing always, that no cash-account be granted unless at least seven of the directors shall concur and approve thereof; and provided also, that no director shall be present, or have a vote in granting a cash account, where he is proposed either as principal or cautioner, in security for said cash account. *Ninth*, That regular and distinct books, containing

containing the whole of the Company's affairs and transactions, and books for entering therein all letters of importance relative thereto, shall be kept, and that the said books shall be regularly posted and brought to a true balance upon the

day of yearly, beginning the first balance upon the day of for the period from the day of

to that time. *Tenth*, That the books and cash, and all bonds, bills, accounts, and other writings, belonging to the Company, shall be kept in their office, and shall not be removed from thence, unless with the approbation of the directors.

*Eleventh*, That the profits arising from the Company's business are to be divided among the partners in proportion to the shares and interest they have in the Company's stock; and the losses arising therefrom, if any be, shall be sustained by the partners according to the same proportion; and the said parties oblige themselves severally, according to their interest in the stock, to relieve each other of such losses, and whole consequences thereof. *Twelfth*, In case it shall appear expedient for the directors for the time being, at any time or times, to assume more partners into the said Company, and increase their capital stock, they shall lay before a stated general meeting of the Company, or a meeting to be called for that purpose, by letters from the cashier to the partners, their proposals thereanent; and such general

ral meeting shall adjourn for any space, not being under sixty days thereafter, when they shall again meet and decide upon the same proposition; and if the same shall be determined in the affirmative by the partners possessed of three-fourths of the Company's stock, present, or by proxy, entitled to vote in terms of the general regulations herein after mentioned, the terms upon which the said new partners shall be assumed, and the number of shares to be held by them severally, (which are hereby declared to be in addition to the Company's capital stock), shall be finally settled and adjusted by the directors.

*Thirteenth*, That transfers may be made of the Company's stock in such form and manner as shall be laid down by the directors, which shall be effectual for denuding the persons transferring, but subject to the conditions, burdens, and restrictions herein after mentioned; such transfers being made by a partner, or some person in his right, or by his attorney, specially authorised for that purpose, but so as such transfer be made and accepted of by the purchaser in presence of two directors signing the deed of acceptance; and that the executors and voluntary disponees of a deceased partner may have the stock, to which they have right, transferred to them by a quorum of the directors, who are to assume them as partners in the Company, in place of the said deceasing partners, PROVIDED that, in all cases,  
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not less than one share shall be transferred, and that the transfer be in favour of one person only.

*Fourteenth,* If, upon the death of a partner, his share of the said stock shall, either by deed or legal succession, fall to more than one person, such persons shall, within the space of six months after the death of such partner, make up a proper title to, and convey the share or shares which belonged to such partner, either to one of their own number, or to any other person, not being under one share to one person, and obtain the same properly transferred in the person of their disponees, and accepted of by them; and in case they shall neglect so to do, the person or persons who shall so have right to the said share or shares, shall cease to have right thereto; and such share or shares are hereby declared to be vested in the remaining partners of the Company; and the directors for the time being shall be empowered, and hereby are empowered, to sell the same by public roup, to be advertised in manner foresaid; and on their accounting for the neat proceeds of the sale or tender thereof by the cashier to those having right thereto, the said Company shall be, and are hereby declared to be exonerated and discharged of all claims competent to the executors or disponees of the partner dying, in respect of the said stock.

*Fifteenth,* In case the share or shares of any partner in the said stock shall be attached or affected by legal diligence, the directors shall immediately

ly thereafter notify the same to the partner, for whose debt the same is attached or affected, by a letter from their cashier; and if such partner shall not, within the space of three months after the date of such letter, obtain and record, in any competent register, a discharge of the said diligence, and all following thereon, and debt whereon the same is founded so far as respects the said stock, he shall cease to be a partner of the said Company; and his share or shares in the said stock shall become, and is hereby declared to be vested in the other partners of the said Company; and the directors for the time being are hereby authorized to sell the same by public roup, in manner above mentioned; and the proceeds thereof shall, after deduction of expense, be made forthcoming to all concerned, subject always to the right of retention after mentioned.

*Sixteenth,* In like manner, in case the share or shares of a partner shall, on his death, be carried by confirmation of creditors, or in case the death of any partner, his heirs or representatives, shall not, within the space of six months after the death of such partner, obtain the shares of the deceased duly transferred and accepted of, such shares shall be, and are hereby declared to be vested in the other partners of the said Company; and the directors for the time are hereby authorized to sell the same by public roup, in manner above mentioned; and the neat proceeds thereof shall be

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made forthcoming to all concerned, subject always to the right of retention herein after mentioned.

*Seventeenth*, In case the share or shares of any partner shall be conveyed to, or vested in trustees for behoof of his creditors, by any act or deed, voluntary or legal, or conveyed in security of any debt or engagement, it shall be lawful to the Company and their directors, notwithstanding such acts and deeds, within six months after the partner shall have denuded, or shall have conveyed, to sell the shares which belonged to him (and which are hereby declared to be vested in the Company for that effect) by public roup, in the form and manner herein before prescribed; and the neat proceeds thereof shall be made forthcoming to all concerned, subject to the right of retention herein after mentioned. *Eighteenth*, That in all cases wherein any partner shall become debtor to the Company, or to any person or persons for their use and behoof, or shall lye under engagements to them of any kind, it shall be lawful for the Company to retain the share or shares belonging to such partner, and profits thereof, and to refuse to transfer the said shares until such partner shall have paid all such debts as shall be due to the Company, or to any person for their use and behoof, and shall have relieved them of all engagements for him; which debts and engagements are hereby declared to be preferable upon the stock and profits belonging to such partner, to all other creditors of the partner,



and to his assignees, voluntary and legal : AND in order that the Company may have it in their power to pay and relieve themselves out of the stock and profits belonging to such partner, the directors for the time being shall, and are hereby authorised to sell, by public roup, in the manner before prescribed, the share or shares belonging to such partner, and the profits thereof, (which are hereby vested in the Company for that effect), and apply the proceeds to pay the said debts, and relieve the said engagements and expense of sale, unless such partner shall, within the space of sixty days after requisition made by the cashier by letter to him, to pay up the said debts, and relieve them of the said engagements, comply with the said requisition ; and the Company shall only be accountable for the surplus, after making the said application, to be paid to those interested, on a discharge of all claims competent against the said Company. *Nineteenth,* That in all cases where sales shall be made by the directors, the upset price shall be fixed by them ; and all purchasers at sales shall, within the space of one month after such sale, obtain his purchase transferred and accepted in manner before described ; and, in case he shall fail, it shall be lawful for the directors for the time to sell the shares so purchased, by public sale, in manner before mentioned ; and the same mode shall be followed in case of a second, or any other sale, until the stock so sold shall be duly transferred and accepted, as  
said

saïd is. *Twentieth*, In order to enable the Company and their directors, in the most effectual manner, to execute the sales which, in the different cases before mentioned, they are authorised to make, the saïd several parties do hereby convey and make over, to and in favour of the saïd M Banking Company, all such share or shares in the saïd Company's stock, which they now hold, or may hereafter hold, and which stock is hereby vested in them accordingly, to the effect that the directors may sell and dispose thereof for the uses and purposes before mentioned ; and the partners shall be, and are hereby declared to be, effectually denuded of their saïd stock ; and the purchasers thereof from the Company are hereby declared to be completely vested in the right thereof ; and in all cases of sales made by the directors as aforesaid, the Company shall not be answerable for the purchasers, and shall only be liable to hold count for the sums actually received by them in respect of such sales : and further, that from the time the proceeds of such sales shall come into the Company's hands, and their offer to account for the same be made by letters from the cashier, all interest thereon shall cease. *Twenty-first*, That all new partners, in respect of additional stock created by the Company, and all purchasers at sales, and all persons who shall have stock transferred to them, shall be bound by the whole articles herein before and after mentioned, and by all subsequent rules and regulations made by general meetings, in the

same manner as if they had been subscribers hereto ; and they shall be bound, if required, to sign these articles, or a copy thereof, and to grant a separate obligation for implement ; and that all the persons who shall be partners of the said Company on the said            day of            , or shall thereafter become partners, and their representatives, shall remain bound to the Company after their shares have been sold, transferred, or otherwise disposed of, to the effect of making up a proportion effecting to the stock which was held by them respectively, of all debts that may be due by the Company during the subsistence thereof, in so far as such proportion cannot be made good by the stock of the Company, or the respective holders of the shares thereof that have been sold and transferred as aforesaid. *Twenty-second*, That the stock of the said Company, and profits thereof, and the shares of every person therein, shall be held, deemed and adjudged, to be a personal, and not a real estate, notwithstanding any rights to be acquired by the Company, or for their behoof; and shall, failing any settlement thereof by the partner, descend to his executors, and not to his heir. *Twenty-third*, In case of the death or bankruptcy of any of the parties hereunto, or of their going out of business before the said            day of            , (the case of going out of business being to be finally judged of by the directors), the share or shares of stock subscribed for by them shall not fall or belong to the executors or dispo-

nees of the person dying, or any person claiming under them, nor to the creditors of the bankrupt, nor shall the same be claimable by the persons going out of business as aforesaid; but all such shares shall wholly belong to the Company, and shall be disposed of by the directors as they shall judge proper; and, if any advance shall have been made on such share, the same shall be repaid.

*Twenty-fourth.* All the said parties hereby agree, that summary diligence by horning shall pass against them for payment of the remainder of the said shares accordingly, as the same shall be called for; and that the production of an extract of these presents, together with a certificate from the cashier, of the call having been made, shall be sufficient ground for warranting letters of horning against them for payment thereof, and interest, and a fifth part more of liquidate expenses, within six days after the charge, and that all further diligence, by caption or otherwise, shall follow thereon; and no suspension of a charge so given shall pass, but on consignation only. *Twenty-fifth,*

And in order to proceed to the execution of the object of this contract, the said parties hereby agree, that they shall meet in the council-house, or any other proper place within the town of M, upon the                      day of                      next, for the purpose of ordering and directing such steps as may be necessary to be taken preparatory to the commencing business; and that the next ge-

neral meeting shall be held on the first Monday of \_\_\_\_\_, for the purpose of electing the directors of the Company, who are to consist of thirteen for the time, from the said \_\_\_\_\_ day of \_\_\_\_\_, to the first Monday of \_\_\_\_\_, and also for electing their cashier, and other officers of the said Company; and that, thereafter, there shall be two general meetings of the partners of the said Company held yearly, the first on the first Monday of \_\_\_\_\_, and the second on the first Monday of \_\_\_\_\_, for the purpose of considering the state of the Company's affairs, and making such rules and regulations, and for giving to the directors such further powers as they shall find necessary and conducive to the interest of the Company, which shall be binding on the whole partners present and absent: PROVIDED that it shall not be in the power of any such general meeting to set aside any of the articles herein contained, except in the manner herein after prescribed: THAT at the said general meeting of the partners on the first Monday of \_\_\_\_\_, the directors of the Company for the ensuing year shall be chosen; and, at the same time, the meeting shall declare if any, and what, dividend shall be made on the free profits of the Company to the partners, and the time when the same shall be paid to them: PROVIDING that, in no case whatever, shall the stock of the Company be diminished by such dividend; and that a general meeting

meeting may, and are hereby empowered to authorise the directors to purchase, or take in lease, a house already built, or an area whereupon to build a place to be used and disposed as an office for this Company, on such terms and conditions as to the directors shall seem proper. *Twenty-sixth*, That the thirteen directors to be chosen on the said first Monday of \_\_\_\_\_ by the general meeting, shall hold this office till the first Monday of \_\_\_\_\_, when, and at every subsequent first Monday of \_\_\_\_\_ yearly, not less than four of the directors shall be changed, and new directors elected in their place; and that no person shall be qualified to be chosen a director, or to continue in that office, unless he is, at the time of his election, and shall, during the time for which he is elected, continue to be possessed of four shares of the Company's stock at least. *Twenty-seventh*, That it shall be lawful for the partners, at a general meeting, to vary and alter the articles, rules and regulations herein laid down, or to add such further articles, rules and regulations, as they shall judge proper, and which shall be binding on all the parties present and absent; providing that such variations, alterations and additions, shall be first proposed to a general meeting, and thereafter approved of by the partners holding two thirds of the Company's capital stock, present or by proxy, at a subsequent general meeting to be called for the special purpose of considering the said proposed alterations and additions, by letters

from the cashier, expressing the purpose and design of the meeting. *Twenty-eighth*, That at all general meetings, the partners may vote by themselves, or their proxies duly authorized; and that all partners shall have a vote for each share of stock, providing that a partner, in consequence of the Company's allowing him to hold more than six shares, shall not be allowed more than one vote for every two shares he shall hold above six; providing also, that no proxy shall be allowed to vote, unless he be a partner; and providing also, that no partner shall, by himself or proxy, be entitled to vote at any meeting after the second, if, at the time, he shall be resting any part of the said advance of 40l. on each one hundred pounds of stock; or the subsequent calls on his stock; nor shall any person be entitled to vote by himself or proxy, unless his share of the stock is duly transferred to him. *Twenty-ninth*, That at all general meetings the partners present, by themselves or by proxy, shall choose their own preses, who, besides his vote or votes, to which he is entitled in respect of his shares in the Company stock, shall have one decisive or casting vote, in case of equality; That there shall be kept regular *sederunt* books, wherein shall be engrossed the whole proceedings of the general meetings; and each *sederunt* shall be signed by the preses of the respective meetings, and the cashier of the Company, or, in his absence, the accountant; which

which shall in all cases be sufficient evidence of the proceedings which have been had. *Thirtieth*, That notwithstanding the period fixed for the endurance of this copartnership, it shall be lawful to the partners of the Company to dissolve the same at any time after the expiry of seven years, from and after the                      day of                      : PROVIDING ALWAYS, that a motion for such dissolution be made in writing, duly signed by the partners possessed of at least one-fourth of the shares of the Company's capital stock, at a stated general meeting of the Company to be held on the first Monday of                      , or at a general meeting to be called by the directors upon a proposal for such dissolution being laid before them, which they are hereby required to convene within thirty days after such proposal shall be laid before them; and that, in consequence thereof, another general meeting of the partners be called, not under the space of three months thereafter, to deliberate on the said motion; and that the cashier notify, by letter, to each partner, the time and purpose of the meeting; and therewith transmit a state of the Company's affairs laid before the meeting where such motion was made; and at the said meeting thus called, the motion for a dissolution shall be decided on; Provided always, that no dissolution shall take place, unless the same shall be voted by partners possessed of two-thirds of the Company's stock, or their proxies specially authorized for that purpose. *Thirty-first*, In case, at any time during the



the said twenty-one years, it shall appear, upon bringing the Company's books to a balance, that a sum equal to 5 *per cent.* of the Company's whole capital stock of Sterling, and of such additional stock as may be created by the Company, has been lost in prosecution of the business of the Company, it shall be in the power of partners possessed of one-third of the capital stock of the Company, or their proxies specially authorized for that purpose, at any stated general meeting, to insist that the Company shall be dissolved; and, on a motion for that purpose being made, another general meeting shall be called by letters to the partners from the cashier, to be held, not under the space of three months after such motion is made; and at this meeting, the partners present, by themselves or by proxy, shall be bound to dissolve the said partnership, and to declare the same dissolved from and after the expiry of thirty days thereafter. *Thirty-second,* That during the dependence of a motion made for dissolving the Company, in either of the cases before mentioned, no transfer of the Company's stock shall be permitted, nor shall any transfer of stock be allowed in case of, or after such dissolution. *Thirty-third,* That when a dissolution takes place, in either of the cases before mentioned, the general meeting at which such dissolution takes place, shall name proper persons for managing and winding up the affairs of the Company, who shall use the Company's firm for that purpose, and employ proper persons

persons to act under them ; and such dissolution shall be intimated in the Edinburgh newspapers ; and the Company shall, thirty days after the dissolution is agreed to, discontinue the issuing of notes, operations on cash-accounts, discounting of bills, and all other ordinary business ; and at the expiry of that period, the persons to be named as aforesaid shall proceed, with all convenient diligence, to levy the whole debts due to the Company, and turn their estate and effects into cash, and apply the proceeds thereof ; in the first place, in discharge of the debts due by the Company, and the expense of management ; and, in the next place, for reimbursing the partners of the sums they have advanced to the stock of the Company, and the remainder shall be divided among the partners proportionally, according to their respective shares and interest in the stock, and the managers shall have it in their power to call a general meeting when they shall think fit ; and the major part of the said managers so to be named, shall be a quorum. *Thirty-fourth*, In case, at the expiration of twelve months from the dissolution, any of the debts or effects shall happen to be outstanding, and not disposed of, such debts and effects shall, by a general meeting of the partners to be called by the managers or cashier, by missive letter to each partner, be divided into lots, and a value fixed thereon, each lot not exceeding 500*l.* Sterling, and not being less than 100*l.* Sterling

ling of original value, and which lots shall, by the managers, be sold, by public roup, at the value put thereon by the general meeting, and that within the town of M, after previous notice in the Edinburgh newspapers sixty days before the time of such sale; and, in so far as the lots shall not sell at the said roup, the managers shall have it in their power to lower the upset price from time to time, till a sale actually take place; and how soon the whole debts and effects of the Company are recovered, and converted into money, and the proceeds applied and divided as above mentioned, the whole powers hereby committed for managing and winding up the Company's affairs shall cease and determine: Provided always, that in case the said managers shall not have winded up the whole affairs of the Company within the space of two years after the expiry of this present contract, it shall be in the power of any ten in number of the partners, to call a general meeting of those who have been concerned in the said copartnership; which meeting may, and are hereby authorised to elect new managers, in place of those who have been formerly appointed, for the purpose of winding up the affairs of the Company, in case it shall be judged proper and expedient so to do. *Thirty-fifth.* That at the determination of this Company at the expiry of the said twenty-one years, if the same shall continue so long, the same proceedings shall be had as to winding up the Company affairs,

fairs, as is mentioned and contained in the two immediately preceding articles. *Thirty-sixth,* And in order to prevent all questions with respect to the requisitions, letters and notifications, hereby directed to be wrote and given to partners in the various cases herein before-mentioned, and other letters and notifications not herein provided for, either under the authority of the directors or general meeting, IT IS HEREBY AGREED, that a certificate from the cashier, certifying that he did write and despatch in the ordinary course such requisitions, letters, notifications, shall in all cases be held sufficient evidence that such requisitions, letters and notifications, were duly sent and actually received by the partners; in like manner, the certificate of the managers or their cashier, after a dissolution, that the letters directed to be written were actually wrote and despatched, shall be held sufficient evidence thereof, and that they were actually received by the partners; and as to all rouns hereby ordered to be advertised, or others which may be ordered by the directors or general meetings, a certificate by the cashier, importing that such rouns were duly published, shall be held sufficient evidence of due publication. *Lastly,* That the said parties shall perform their respective parts of this present contract to one another, in the whole heads, clauses, and articles thereof, with good faith, and according to the true intent and meaning

ing of the same, and that under the penalty of fifty pounds Sterling for each share, to be paid by the party failing to the Company's cashier, for behoof of the Company, over and above performance. And for the more security, they consent, &c.

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## 6. MANDATE.

### *Letter of Credit.*

SIR,

Edinburgh, May 1, 1792.

Please to give the bearer, B, such sums as he shall demand from you, or draw for, to the extent of 1000l. Sterling; charge the sums so paid him to my account, and his receipts or draughts shall be sufficient vouchers of the payment, so as to entitle you to be repaid by,

SIR,

Your humble servant,

To Mr A K, merchant  
in Paris.

A.

*Potter*

*Power of Procuration granted by Bankers for  
Managing their Affairs in their Absence.*

We A, B, and C, bankers in Edinburgh, under the firm of A, B, and Company, being resolved to appoint a procurator for managing the affairs of the said Company in our absence, and having confidence in the ability and integrity of D, our principal clerk, for that purpose, have nominated and appointed, as we do hereby NOMINATE, CONSTITUTE and APPOINT, the said D to be our procurator, for the purpose, and to the effect after specified, GIVING, GRANTING, and COMMITTING to him full power, warrant and authority, for us and in our name, as our procurator, to grant and subscribe all bills, promissory notes, or other obligations, necessary, for such sums of money as shall be lodged with us; as also, to draw bills and letters of credit on our correspondents; to discharge all bills, promissory notes, accounts and vouchers of debt of every kind, due to, or which shall be paid to us, and, in general, to manage all our business in our absence, and to subscribe, by procuration, all writings which may be necessary for that purpose: DECLARING, that all such writings so subscribed by the said D, shall be equally valid and binding on us, as if the same were subscribed by ourselves, and by our firm; reserving full power to

us to revoke these presents at pleasure ; And we CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation, and that all necessary execution may follow thereon as effects ; and, for that purpose, we constitute

OUR PROCURATORS, &c. IN WITNESS whereof, &c.

*General Faculty for Managing the Affairs of a Person going Abroad.*

I A, CONSIDERING that I am on the point of going abroad, where I may be detained for some considerable time, and that it is necessary for me to appoint a proper person for the management of my affairs in this country during my absence, and having confidence in the fidelity and attention of B for executing that office, do therefore hereby NOMINATE, CONSTITUTE and APPOINT the said B to be my factor and commissioner, to the effect after mentioned, GIVING, GRANTING, and COMMITTING to him my full power, warrant and commission, for me and in my name, to ask, crave, demand, uplift, receive, pursue for and discharge, assign or convey, all and sundry debts and sums of money and others whatsoever, due and ad-  
debted to me by bond, bill, account or other-  
ways ;

ways; and particularly the whole money and victual rents, feu-duties, kains, customs, casualties, and services which are presently, or shall hereafter become due and payable for my lands and estate of R, and for the whole other lands and subjects belonging to me lying in the county of P; and for that purpose, and for the management of my said estate, I hereby NAME and APPOINT the said B to be my baron baillie over my whole estate lying in the said county, with power to fence, hold, and continue baron courts as oft as he shall think proper, and that upon any part of the lands above mentioned; to hear and determine such actions and complaints as may be brought before him; and to issue decreets accordingly; and to appoint proper officers under him; and, generally, with full power to do every thing which to the office of baron baillie is by law competent: And I also hereby give full power, warrant and authority to the said B, to appoint proper factors and others under him, for whom he shall be answerable, for assisting him in the uplifting and ingathering the rents of my said lands; and with power also to the said B to set tacks for such a term of years as he may judge proper, but not exceeding nineteen, and for such yearly tack-duty as he shall think proper and expedient, but not under the present tack-duties, not only of my said lands lying in the said county, but also of any other subjects belonging to

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me, or which I may succeed to during my absence abroad ; with power always to the said B to grant deputations of bailliary to proper persons, for whom he shall be answerable, and to remove tenants upon my estate in the said county ; and for that effect, either in my name or his own, to issue precepts of warning, and thereupon to intent and pursue processes of removing, and all other execution of the law competent in the like cases ; and also, in my name or his own, if he shall find it necessary and proper, to apply to the Sheriff or Judge ordinary of the said county, for interdicts or other prohibitions of the law, for preventing any person or persons from encroaching, or attempting to encroach, upon any part of my property within the said county ; and to pursue processes of mails and duties against the tenants of my lands in the said shire, or against any other persons my debtors ; and also to defend me in any processes which may be raised by any person against me ; and for that purpose, to employ such advocates, procurators and others, as he shall think proper ; and also to compound and transact any doubtful debts or claims which may be due or owing to me, or any claims which may lye against me ; and, if he thinks proper, to enter into submissions for me, and in my name, to one or more arbiters ; and to settle, clear, and adjust all accounts, workmens' bills, servants' wages, and other debts which may be due by me : And I hereby

hereby authorise and empower the said B to sell and dispose of the victual presently upon the farms of my said estate in my own possession, to such person or persons as he shall think fit, and for such prices as he can obtain; and, generally, every other thing to do anent the premises, which I could do myself if personally present: **DECLARING** hereby, that all receipts, discharges and conveyances granted by the said B to whatever person or persons, and all acts and deeds done by him in execution of the premises, shall be equally valid and binding as if granted or done by myself: **AND DECLARING ALSO**, that this factory shall subsist in full force until the same is recalled, in whole or in part, by a writing under my hand: **DECLARING ALWAYS**, that the said B shall be bound and obliged, as he, by acceptation hereof, **BINDS** and **OBLIGES** himself, his heirs, executors and successors, to make just count, reckoning and payment to me, or to any other whom I shall appoint, of his intromissions in virtue of this factory, after deduction of all necessary expenses, and a reasonable gratification for his trouble: **AND I CONSENT** to the **REGISTRATION** hereof in the books of Council and Session, or others competent, therein to remain for preservation; and, for that effect, I constitute

MY PROCURATORS, &c.

*Commission for settling Accounts with the Constituent's former Agent, and appointing a future Agent.*

KNOW ALL MEN BY THESE PRESENTS, that I A, CONSIDERING that I cannot attend personally at Edinburgh to transact and manage such of my affairs as require despatch and attention, and, in particular, to settle accounts with B, writer to the signet, who has acted for some time past as my agent, and to receive from him the papers and other writings belonging to me; and having entire confidence in the integrity and abilities of D; Therefore, I have given and granted, as I do hereby GIVE, GRANT and COMMIT full power, warrant and commission to D, writer to the signet, to settle, adjust, clear and discharge all accounts subsisting betwixt me and the said B, and to receive and to recover from him, without delay, all papers and writings of whatever kind belonging to me in the custody of the said B, or which were committed to his care by me. AND MOREOVER, I do hereby further constitute and appoint the said D to be my writer and agent in all my transactions, business and affairs whatever, and to conduct all lawsuits in which I may be concerned as pursuer or defender; and, generally, with power to the said D to do every other thing usual and customary, in relation to the premises, that I could do myself

myself if personally present ; the said D being always allowed by me a sufficient gratification for his trouble ; But declaring, that this commission shall only remain in force during my pleasure :  
**AND I CONSENT to the REGISTRATION, &c.**

*Factory or Mandate empowering a Person to sign a Submission, and receive Payment of the Sum awarded.*

I A, CONSIDERING that B stands indebted to me in a sum of money, and that certain of his other creditors have agreed to submit and refer all questions, claims and differences amongst them, and particularly their several rights and grounds of preference to the proceeds of the said B's estate and effects, to D ; and, in case of his death, or refusal to accept, to G ; and that I cannot conveniently attend to my right and interest as a creditor of the said B, and having trust and confidence in the ability and integrity of C to act for me in the premises : THEREFORE, I do hereby nominate, constitute and appoint the said C to be my factor, to the effect underwritten ; GIVING and GRANTING full power and authority to the said C, to subscribe the foresaid reference or submission for me, or such other reference or submission as may be concerted, and he shall approve of ; and also to appear for me, and enter my

claims before the said arbiters ; and, upon payment in whole or in part, to grant receipts, discharges or conveyances, which shall be sufficient to the receivers ; and generally every other thing, in relation to the premises, to do and perform, as fully and effectually, to all intents and purposes, as I could do myself if personally present ; all which I hereby promise and become bound to ratify and confirm. AND I CONSENT to the REGISTRATION, &c.

*Factory granted in the West Indies, for uplifting a particular Claim in Scotland.*

I A, spouse to B, of the town of Kingston, in the island of Jamaica, merchant, daughter of the deceased D, merchant in Edinburgh, procreated betwixt him and E his spouse, now deceased, with the advice and consent of my said husband ; and I the said B, for my right and interest, CONSIDERING that F, father of me the said A, died possessed of certain heritable subjects or tenements in or about the said city of Edinburgh, with houses, yards, parts and pertinents thereunto belonging, as the same are described in the rights and indentments thereof, and other goods and effects, to a proportional share of which subjects, which so belonged to my deceased father, and of all sums of money, debts and effects which pertained

tained and belonged to him at the time of his de-  
 cease, I, as one of his heirs-portioners, have right,  
 in conjunction with my other sisters ; and as, from  
 my residence abroad, it is proper and necessary  
 for me to constitute and appoint some person for  
 managing and taking care of my interest and con-  
 cern in the subjects and effects which belonged to  
 my deceased father, and for taking all such legal  
 steps as may be necessary to secure and establish  
 our rights and interests therein, to sell and dis-  
 pose of the said subjects for such price as can be  
 got for the same, and to uplift, receive and dis-  
 charge my share and proportion thereof ; and, in  
 the mean time, till such sale is made, to uplift  
 the rents, profits, duties and casualties of the said  
 subjects, in so far as I am concerned, or of such  
 other sums of money or effects as belonged to my  
 deceased father : And having full confidence in  
 the ability and integrity of G ; I, with consent  
 foresaid, do hereby nominate, constitute and ap-  
 point the said G to be our commissioner, factor  
 and attorney, for the purposes after-mentioned ;  
 GIVING, GRANTING and COMMITTING to him full  
 power, warrant and authority, for us, and in our  
 name, to purchase and procure from his Majesty's  
 Chancery such briefes for serving me the said A  
 one of the heirs-portioners to my said deceased  
 father, or such other of my predecessors as shall  
 appear necessary, and to obtain and procure me  
 the said A served and cognosced heir as aforesaid,

before any competent Judge, and to sign for, and in our name, the claim of service, and such other writs as may be necessary for expediting thereof, and generally every other thing thereanent to do which we could do ourselves if personally present; and also, for us, and in our name, to sell and dispose of the said subjects and tenements, and that either in conjunction and along with my other sisters, or my own share and proportions of the same, either by public roup or private bargain, and for such price as the said G shall think proper and adequate; and thereupon, for us, and in our name, to make, grant, subscribe and deliver, in favour of the purchaser or purchasers, dispositions, or other writings and securities, containing all the usual and necessary clauses, and to bind us in absolute warrandice to the extent of my proportion of the said heritable subjects; and also to receive my share of the price thereof, and to grant receipts and discharges therefor, all which shall be as valid and sufficient to the receiver or receivers as if the same were granted and subscribed by ourselves: And we hereby grant full power, warrant and authority to the said G, to uplift and receive the debts, goods, gear and effects, which pertained to my said deceased father, or any of my predecessors; and, upon payment thereof, receipts, discharges and acquittances to grant, which shall also be as valid, effectual and sufficient to the receiver or receivers, as if granted and subscribed

scribed by ourselves : And further, we hereby grant full power and authority to the said G, for us, and in our name, to intent, follow forth and pursue all actions and processes proper and necessary for establishing and ascertaining my right and interest in the subjects and tenements, goods, gear and effects, which belonged to the said deceased D, father of me the said A, or any of our predecessors, and in the rents and profits of the same ; decreets and diligences thereupon to obtain, and cause be put to due execution ; discharges, acquittances or conveyances thereof to grant, upon receiving payment ; and generally every other thing in the premises to do, that we could do ourselves if personally present : And we not only promise, and BIND and OBLIGE ourselves, to hold firm and stable, without revocation, whatever the said G does, or causes to be done, in the premises, but we also BIND and OBLIGE ourselves, our heirs and successors whatever, to ratify, homologate and approve, all the dispositions, and other deeds or securities to be granted by the said G, for us and in our name, in relation to the premises, and that when we shall be desired and required so to do : PROVIDING ALWAYS, that the said G shall be bound and obliged, as he, by acceptation hereof, obliges himself, his heirs, executors and successors, to make just count, reckoning and payment to us, of whatever sums he shall receive in our name and on our account, in virtue of these presents, after deduction



deduction and allowance of all charges and expenses which he may be put to or incur thereanent, and a reasonable gratification for his pains and trouble. AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or others competent, therein to remain for preservation, and that all execution competent may follow hereon; AND, for that purpose, I, with consent foresaid, CONSTITUTE

OUR PROCURATORS, &c. IN WITNESS whereof, these presents, written on            pages of stamp paper, by           , are subscribed by us at            the            day of            one thousand eight hundred and eleven years, before these witnesses, M and N, (*mark them out by their trade or profession.*)

M, witness,

A,

N, witness,

B.

*A General Letter of Attorney to recover and discharge Debts,—take Security on Lands, &c.—sell and dispose of Lands, &c.—and to release, or surrender and renew Mortgages, &c.*

KNOW ALL MEN by these presents, THAT A, B, C and D, of the city of Glasgow, in that part of the kingdom of Great Britain called Scotland, merchants and copartners, HAVE, and each and every

every of them HATH, made, named, constituted, authorized and appointed, and by these presents do, and each and every of them doth, make, name, constitute, authorize and appoint, and in their stead and place put, jointly or separately, E and F, of the parish of , in the island of , Esquires, their, each and every of their, true and lawful attornies and attorney, FOR them, and in their names, and in their behalf, and to and for their use and behoof, TO recover and receive, of and from all and every person and persons in the said island of , who now are, or shall or may, at any time or times hereafter, become indebted to them the said A, B, C and D, ALL and every such sum, and sums of money, debts and demands whatsoever, as now are, or shall or may, at any time or times hereafter, so as aforesaid, become due and owing to them in the said island of ; AND, upon recovery and receipt of such sum and sums of money, debts and demands, or any part thereof, FOR them the said A, B, C and D ; and in their names to make, execute and deliver all such releases, acquittances, or other good and sufficient discharges, as shall be judged requisite and proper for the same ; AND, in case of refusal or non-payment, to commence and prosecute with effect all such action and actions at law, or in equity, and to have, use and take all such lawful ways and means, as shall be judged necessary and requisite

quisite for the recovery of such sum and sums of money, debts and demands ; AND for them, the said A, B, C and D, and in their behalf, to accept receive and take, in lands, tenements, slaves, hereditaments, and other real or personal property, satisfaction and payment, or security, for all and every such sum and sums of money, debts and demands whatsoever, or any part thereof, as now are, or shall or may, at any time or times hereafter, become due and owing to them, as aforesaid, in the said island of ; AND ALSO, for them, the said A, B, C and D, and in their behalf, if they the said E and F, or either of them, shall think proper, to sell and dispose of all such lands, tenements, slaves, hereditaments, and other real and personal property, so as aforesaid to be accepted, received and taken by them, or either of them, in satisfaction and payment of the said sum and sums of money, debts and demands, or any part thereof ; AND ALSO, for them, the said A, B, C and D, if it shall be necessary, to release, surrender, assign or cancel, all such mortgages, and other securities, as they the said A, B, C and D, now hold, for all or any part of the said sum and sums of money, debts and demands, at present due and owing unto them in the said island of ; AND to accept, receive and take such other security or securities, in lieu and place of those so released, surrendered, assigned or cancelled, as they, the said E and F, or either

either of them, shall judge proper: WITH full power and authority, also, to the said E and F, or either of them, duly to execute (by signing the several names, and affixing the several seals, of them the said A, B, C and D, to, and delivering in due form of law) ALL such deeds of conveyance, and other instruments, as shall be found requisite for the purposes aforesaid; AND ALSO, for them, the said A, B, C and D, to compound and agree for the said sum and sums of money, debts and demands; AND in general to do, perform and execute, all and every such further and other lawful and reasonable acts, deeds, matters and things whatsoever, needful and requisite for the purposes herein before-mentioned, as fully and effectually as the said A, B, C and D might or could do themselves, if personally present; RATIFYING and CONFIRMING, and hereby promising to RATIFY, ALLOW and CONFIRM, all and whatsoever the said E and F, or either of them, shall lawfully do, or cause to be done in the premises, by virtue of these presents. IN WITNESS WHEREOF, the said A, B, C and D have hereunto set their hands and seals, the                      day of                      , in the year of our Lord                      .

**Sealed and delivered (being  
first duly stamped) in the  
presence of** **G.  
H.**

**A. (L. S.)**  
**B. (L. S.)**  
**C. (L. S.)**  
**D. (L. S.)**

## Power

*Power of Attorney by a Husband and Wife, to sell  
a Plantation, Sugar-Work, and Negroes, and  
to execute the Deeds of Conveyance.*

KNOW ALL MEN by these presents, That A, of  
the city of , and county of ,  
in that part of the kingdom of Great Britain call-  
ed Scotland, merchant, and Emilia his wife, here-  
tofore (or formerly) Emilia P, HAVE, and each  
of them hath made, named, constituted, autho-  
rized and appointed, AND by these presents do,  
and each of them doth make, name, constitute,  
authorize and appoint, and as far as they, jointly  
or separately, may or can, in their stead and places,  
put and depute B, of the parish of  
in the island of , Esquire, their true and  
lawful attorney, FOR them, and each of them,  
and in behalf of them and each of them, to con-  
tract and agree for the sale, and at and for such  
reasonable rates and prices as he the said B shall  
think fit, to sell and dispose of ALL that planta-  
tion and sugar-work, of them the said A, and  
Emilia his wife, in right of her the said Emilia,  
commonly called , lying and being in  
, containing, by estimation  
acres, (be the same more or less); AND ALSO,  
all those twenty negro and other slaves, upon,  
and belonging to, the said plantation and sugar-  
work;

work ; That is to say (*here name the slaves*), and the future issue, offspring and increase of the females of the said slaves : And for them, the said A, and Emilia his wife, and each of them, duly to execute, by signing the respective names, and affixing the several seals, of them the said A, and Emilia his wife, to, and delivering to the purchaser or purchasers of the plantation and sugar-work, and negroes, aforesaid, or any of them, all such deeds of conveyance, or other instruments, as shall be thought proper and necessary for the sufficient conveying and assuring the same ; AND generally to do, perform and execute, all and every such further and other lawful and reasonable acts, deeds, matters and things whatsoever, needful for the purposes herein before-mentioned, as fully and effectually, to all intents, as the said A, and Emilia his wife, or either of them, might or could do themselves, if personally present : RATIFYING, and hereby promising to RATIFY, ALLOW and CONFIRM, all and whatsoever the said B shall lawfully do, or cause to be done in the premises, by virtue of these presents : PROVIDED ALWAYS, that the said B shall and do pay over the monies which shall arise from such sale or sales, as and when the same shall be made and perfected, to the said A, his executors, administrators and assigns, to and for his and their sole and proper use and benefit, or as he or they shall order, direct, or appoint. IN WITNESS WHEREOF, &c. &c.

*Power of Attorney by the nearest in Kin to procure Letters of Administration.*

WHEREAS A, late of the parish of \_\_\_\_\_,  
in the county of \_\_\_\_\_, and island of \_\_\_\_\_,  
Esquire, died in the month of \_\_\_\_\_  
last past, intestate, without wife,  
child, or parent;

NOW, KNOW ALL MEN by these presents, that  
B of \_\_\_\_\_, in that part of the kingdom of  
Great Britain called Scotland, merchant, the brother;  
C of \_\_\_\_\_, in Scotland aforesaid, merchant,  
and D his wife, the sister, of the said A deceased,  
have, and each and every of them hath, made, &c. and by these presents do, and each  
and every of them doth, make, &c. E, of the said  
parish of \_\_\_\_\_, county of \_\_\_\_\_, and  
island of \_\_\_\_\_ aforesaid, their, each and every  
of their, true and lawful attorney, for them, each  
and every of them, to appear in the court of Ordinary,  
before the Ordinary of the said island of \_\_\_\_\_,  
and to pray and procure letters of administration,  
of all and singular the goods, chattels and credits  
of the said A deceased, to be committed and granted  
unto him the said E, for and unto the sole use and  
benefit of them the said B, C, and D his wife; and to do,  
perform and execute,

cute, all and whatsoever thing and things, needful and requisite in the premises, as fully and effectually, to all intents and purposes, as the said B, C, and D his wife, might or could do, if personally present; ratifying, and hereby promising to ratify, allow and confirm, all and whatsoever the said E shall lawfully do, or cause to be done in the premises, by virtue of these presents. IN WITNESS, &c.

*Power of Attorney to vote in the Choice of Assignees of an English Bankrupt's Estate.*

KNOW ALL MEN by these presents, That I A of , one of the creditors of B of , &c. against whom a commission of bankrupt, under the Great Seal of Great Britain, hath been awarded and issued, have made, ordained, constituted and appointed, and, by these presents, do make, ordain, constitute and appoint, C of , my true and lawful attorney, for me, and in my name, place and stead, to appear before the commissioners, in and by the said commission named and authorized, or the major part of them, at Guildhall, London, or elsewhere, at the days and times appointed in the London Gazette, for the choice of assignees of the estate and effects of the said B; and then and there, for me, and in my name, to consent with whom the monies to be received from time to time, amounting to the sum of one hundred pounds Sterling or upwards, out of the said bankrupt's estate and effects, shall re-



*Power of Attorney to sign Consent to the Commissioners of Bankrupt, certifying the Great Seal, that the Bankrupt hath conformed, and to consent to the Assignees commencing Suits in Equity, &c., and to receive Dividends.*

KNOW ALL MEN by these presents, That we B  
of , &c. C of , &c. D of ,  
&c.

&c. and E of , &c. creditors of A of , &c. the person against whom a commission of bankrupt is awarded and issued, and now in prosecution, and who have duly proved our respective debts under the said commission, Have, and each and every of us hath, made, ordained, authorized, constituted and appointed, and by these presents do, and each and every of us doth, make, ordain, authorize, constitute, appoint, and in our, each, and every of our, places and stead respectively, put F of , &c. to be our, each, and every of our, true and lawful attorney, For us, each and every of us, and in our, each and every of our, names respectively, to consent with whom the monies to be received from time to time, when the same shall amount to the sum of one hundred pounds or upwards, out of the bankrupt's estate and effects, shall remain until the same be divided ; And also, for us, each, and every of us, and in our, each, and every of our names, places and stead, respectively, to vote in the choice of one or more new assignee or assignees, of the said bankrupt's estate and effects, in case of any alteration or change of the present assignees : And also, for us, each, and every of us, and in our, each, and every of our names, places and stead, respectively, to consent to the commissioners in and by the said commission named or authorized, or the major part of them, signing a certificate for the said bankrupt's having the al-

lowance and benefit given to bankrupts, by an act of Parliament passed in the fifth year of the reign of his late Majesty King George the Second, entitled, ‘ *An act to prevent the committing of frauds by bankrupts,* ’ and that the said bankrupt may be discharged from his debts, in pursuance of the said act: And also, for us, each and every of us, and and in our, each, and every of our names respectively, to consent not only to the commencing any suit or suits in equity, by the assignee or assignees under the said commission, touching the said bankrupt’s estate, BUT also to the submitting of any dispute or difference between such assignee or assignees, or any other person or persons whomsoever, for or on account, or by reason or means of, any matter, cause or thing whatsoever, relating to the said bankrupt’s estate or effects: And likewise, to such assignee or assignees making any composition with any person or persons, debtors or accountants to the said bankrupt, where the same shall appear necessary and reasonable: And also for us, each, and every of us, and in our, each, and every of our names, places, and stead respectively, and for our, each, and every of our own proper uses and benefits respectively, to ask, demand, sue for, and receive, of and from the assignee or assignees of the said bankrupt’s estate and effects, or whom else these presents do, shall, or may concern, all and every such sum and sums of money, as now is, or are, or which shall hereafter

after become due or payable to us the said B, C, D, and E respectively, for our respective dividends or shares of the said bankrupt's estate and effects, on our said respective debts of                      and                      , &c. and duly proved under the said commission as aforesaid ; and, on receipt thereof, for us, each, and every of us, and in our, each, and every of our respective names, to sign, seal and deliver, all and every such good and sufficient receipts, acquittances, releases and discharges, to the said assignee or assignees, as shall and may be lawful, fit, and convenient to be executed ; and, generally, to do all and every such further and other lawful act and deed, matter or thing, in the law, for the better executing and discharging the power and authority hereby given, as fully and amply, to all intents and purposes, as we ourselves, or any of us, might or could do, if personally present ; hereby ratifying, allowing and confirming, all and whatsoever our said attorney shall or may lawfully do, or cause to be done, in and about the said premises, for the better executing the purposes aforesaid, by virtue of these presents. IN WITNESS whereof, we the said B, C, D and E, have hereunto severally set our hands and seals, the day of                      , &c.

It is necessary, in sending letters of attorney abroad, to have them attested by the seal of

the city ; and this is done in the following form.

*Attestation of a Power of Attorney.*

The above named M and N, the subscribing witnesses to the execution of the foresaid power of attorney by the said A, being solemnly sworn, examined and interrogated, make oath and say, that they were present, and did see the within and above named A sign, seal, execute, and of his own act and deed deliver the said letter, or power of attorney, and that the names of M and N set or subscribed thereto are of the proper handwriting of the deponents respectively : And they do further make oath, that it consists with their knowledge, that the said A is the brother of the within mentioned D deceased, and that he is now his heir at law, in consequence of the said D his having died intestate.

(Signed) M.  
N.

Sworn before me, this third day of May, one thousand seven hundred and ninety-three years.

(Signed) L, J. P.

To all and sundry to whose knowledge these presents shall come, I K, present Lord Provost

vost and Chief Magistrate of the city of Edinburgh, in that part of Great Britain called Scotland, do hereby certify and attest, That this day personally came and appeared before me the persons mentioned in the above written affidavit, and made oath and deponed, that the several matters, facts, and things mentioned and contained in the before written affidavit, are truth ; as also, that at same time the said A appeared before me and made oath, that he is the brother-german, and heir, executor, and only nearest relation of the deceased D within named.

(Signed) K.

In faith and testimony of the premises, I have ordered the seal of the said city to be hereunto appended, this  
                   day of                   1811  
 years.

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7. CONTRACTS NOT FALLING UNDER ANY  
 OF THE ABOVE HEADS.

*Contract for building a House.*

IT IS CONTRACTED and AGREED between the parties underwritten, viz. A on the one part, and

G g 4

B

B and C, builders and architects in  
*on the other part*, in manner following: THAT IS  
TO SAY, Whereas the said A has resolved to build  
a new mansion-house on his estate of E, conform  
to a plan, elevation, and state of measurement, de-  
signed, drawn, and subscribed by R. A. esq. archi-  
tect in London; which plan consists of seven dif-  
ferent parts, which are all subscribed by the par-  
ties hereunto, as relative to these presents; THERE-  
FORE, and in consideration of the price herein-af-  
ter mentioned, the said B and C have engaged,  
and, by these presents, bind and oblige themselves,  
conjunctly and severally, and their heirs, executors  
and representatives whatsoever, in a good, suffici-  
ent, and workmanlike manner, to erect, build,  
and finish the said mansion-house, conform to the  
plan, elevation, and mensuration above mention-  
ed; and, at their own proper costs and charges,  
to provide all stones, bricks, timber, lath, nails,  
locks, keys, lead, iron, sand, lime, and all other  
materials whatsoever, which shall be necessary and  
fit to be used in or about the said building; and  
also to carry away to such place as the said A shall  
direct, all rubbish which shall arise by reason of  
the same; AND more particularly, they bind and  
oblige themselves, jointly and severally, and their  
foresaids, to erect and finish the mason-work of  
the said building in manner following, viz. the  
outside of the walls to be broached ashlar, polish-  
ed outer staircase, and carved cornice of the best  
white

white stone from the quarry at \_\_\_\_\_, the principal door to be ornamented as in the plan, and to have cast-iron rails, or stone ballustrades, in the option of the said A, and lamps conform to the elevation, droved backstairs, polished great stair, and skiftings thereto, both stairs to have iron rails, and mahogany hand rails. The kitchen pavement, and that of the rest of the sunk storey, to be droved, with power to the said A to have such parts thereof as he shall direct, floored with wood in a proper manner; the kitchen to be arched with brick, as likewise the scullery, servants' hall, and cellar; all the rest of the house to be deafened; the cellars under the stair-case to have stone arches, and to be causewayed; the wine cellars to be catacombed with bricks, and divided according to the direction of the said A; and the other cellar and pantries are to be properly shelved; two marble chimney-pieces, not under the value of twenty-five pounds Sterling, including black marble covings, and veined marble hearths, and two pair of marble jambs, with wood dressings; the whole of the walls in the foundation to be three feet nine inches thick, the outside walls in the ground storey to be two feet nine inches thick; in the principal storey two feet six inches; in the bedchamber storey two feet three inches; and in the attic storey two feet thick: the walls of the vents within the house to be from three feet to two feet six inches



inches thick on an average ; the drain to be arched of an oval form, for conveying the water from the house, of good ruble set in mortar, made with sharp sand and new slacked lime, three feet high by two feet wide, with smaller drains from the roofs and sunk rooms ; the chimney stalks to be broached, and the floor of the hall to be of polished pavement or wood, in the option of the said A : AND they bind and oblige themselves to finish the wright-work thereof as follows : viz. the principal rooms to have framed joisting, all the other rooms to have common joisting, and the whole to be laid with battens not exceeding six inches broad ; and the roofing to be all of the best Memel timber that can be procured, and covered with sarking three quarters of an inch thick. The doors of all the rooms to be six-pannelled, and two and one quarter inch deal ; and the doors of the diningroom and drawingroom, and the washing boards of these rooms, to be of good mahogany ; the doors of the closets to be six-pannelled, and inch and three quarters deal ; the doors and windows in the dining-room, drawing-room and library, to have double-faced architraves, and base and furbase mouldings ; the bedrooms and other rooms to have single-faced architraves, and finished to the floor with a toris plintle ; the dining-room and drawing-room to have ducked lining round the room ; and all the windows in the house to have wooden breasts, scunchions,

scunchions, and suffets ; all the sashes of the windows to be of wainscot and fir deal cases ; and what window-sashes are of fir, there shall be five shillings discount per window for it ; all the windows to be glazed with the best Leith crown-glass, and hung with brass pulleys and metal weights ; and if any windows in the plan shall not be executed, these shall also be discounted from the price ; the hall, staircase and dining-room, to be plastered with hard finishing, and enriched friezes and cornices ; the drawingroom walls to be plastered on lath for paper ; the ceiling to be floated on lath, and to be finished with three coat plaster, with enriched cornice frieze and astragal ; the best bedroom to have an enriched cornice ; all the other bedrooms and lower storey to have plain cornices ; the bedrooms to be lined with three coats of plaster on the walls and ceilings ; and all the insides of the external walls to be bottomed and plastered on lath, the battens to be cut out of inch stuff, and to be fixed with proper wall-hooks, with proper timbers laid on the walls for nailing the grounds to, and for fixing base, furbace, and other mouldings ; small pieces of timber to be nailed to the joists, three inches under the floors for supporting the board or laths, which must be covered with a coat of plaster-lime, to prevent noise, which is called sound-boarding : The house to be covered with the best Estdale slates ; the lead for the platforms, ridges,

ridges and vallies, to be cast to seven pounds per square foot, with four leaden pipes, from two and a half to three inches diameter, for conveying the water into the drains below; and one water-closet, with a lead cistern, to be put up in the first flat; to put on brass locks and good hinges, suitable to the rooms, to be chosen by the said A, and the patterns of the cornices likewise to be chosen by him; to hang all the bells, and to bring the drains down to the water. What old or other materials the said A shall furnish or wish to put into the new house; the said B and C agree to discount or pay the full value thereof, and likewise to allow the said A discount for the lining of the drawing-room, if he should not incline to put it up; AND likewise, the said B and C agree to take from the said A what Memel logs he can spare, and to pay at the rate of                      per foot for them; the principal couples or rafters of the house to be twelve inches by seven at bottom, and ten inches by six at top, the posterns eight inches by five, and the small rafters six inches by three, and eighteen inches from centre to centre; the principal gunders of the floors in the body of the house to be twelve inches square, the posterns ten inches by eight, and the small joists six inches by two; the doors of the house to be seven feet high by three feet three inches, in the principal rooms, and from two feet six inches to three feet wide, in the closets and dressing-rooms; the shutters for the  
windows

windows of the principal storey to be boxed, and to be pannelled in the same style with the doors of the rooms to which they belong ; the shutters to have cross bars and other fastenings to all the windows ; dressers, shelves, and other proper fixtures, are to be put up in the kitchen ; the kitchen, housekeeper's room, and any presses or closets in the house, to be properly shelved and finished. And in general, the aforesaid mansion-house, notwithstanding the particulars above specified, is to be finished in the same manner as the house of \_\_\_\_\_, excepting in so far as altered by the above articles ; and the said B and C oblige themselves, conjunctly and severally, and their forefairs, to proceed to the execution of the work above mentioned, and carry on the same in the manner following ; viz. In the *first* place, they are to cut or break out the wood for the doors, windows, and other purposes above mentioned ; *2dly*, The said mansion-house to be built and roofed in before the \_\_\_\_\_ day of \_\_\_\_\_ ; *3dly*, They are to begin to the plaster in the month of \_\_\_\_\_ ; *Lastly*, They are to finish the whole of the wood work, floors, linings, facings, and other articles, in the month of \_\_\_\_\_, and to completely finish the said mansion-house, and to deliver the keys of the same to the said A, on the \_\_\_\_\_ day of \_\_\_\_\_ : And it is hereby agreed, that the said A shall be at liberty to have the work inspected by tradesmen whom he shall appoint \_\_\_\_\_

appoint for that purpose ; and that he shall have power to make such alterations as he shall think proper on the interior part of the mansion-house, which shall be executed by the said B and C, without their being considered as any addition to the expense, unless walls shall be pulled down and built ; in which case the said B and C shall be allowed the neat expense thereof : AND if any part of the said plan shall not be built or executed, the expense of such part shall be deducted from the price ; and if any of the above articles shall be altered, or executed contrary to the foresaid plan, these shall not be considered as intended deviations or alterations, but the said plan shall be completed, and the present contract be effectual, notwithstanding such articles. AND FURTHER, the said B and C bind and oblige themselves to maintain the said mansion-house wind and water tight for the space of five years ; and if, during that time, any latent insufficiencies be discovered, the said B and C are to repair them, and make them tight at their own proper expenses. FOR WHICH CAUSES, *and on the other part*, the said A binds and obliges himself, and his heirs, executors, and successors whomsoever, to make payment to the said B and C, or their heirs, executors or assignees, of the sum of                      Sterling money, as the agreed price of the said mansion-house, and that at the terms, and by the proportions following ; viz. the sum of 500*l.* Sterling upon laying the foundation  
stone

stone of the said building ; the sum of 300l. at laying the first joisting ; 300l. at laying the second joisting ; 200l. at laying the third joisting ; 300l. when the house is completely roofed ; 300l. when the house is lathed, and the first coat of plaster is put on ; 300l. when the plaster is finished ; 300l. when the windows are completed, and the pavement of the under storey finished ; 300l. when the floors are laid ; and the sum of \_\_\_\_\_, in full of the remainder of the said price, when the house is finished, and the keys delivered ; (out of which last payment is to be retained the price of the wood, or other materials furnished by the said A, and any other discounts or allowances to which he shall be entitled ; with a fifth part more than the said stipulated payments, of penalty, in case of failure, and the legal interest of the said several payments, from and after the said respective terms of payment, during the not-payment of the same : And in case any difference shall arise with respect to the true meaning of the present contract, or the execution of any part of the work hereby contracted for, the said parties hereunto submit the same to the determination of the said R A, as sole arbiter, and oblige themselves and their foresaids to abide by, and acquiesce in such decision as the said R A shall pronounce on the matters hereby submitted to him : And both parties bind and oblige themselves, and their foresaids, to implement and perform their respective parts of the premises to

each other, under the penalty of 100l. Sterling, to be paid by the party failing to the party observing the contract, or willing to do so, besides performance : And both parties consent, &c. (*as on page 285.*)

*Contract for Building a House in the New Town of Edinburgh.*

IT IS CONTRACTED AND AGREED between A, ON THE ONE PART, and B, mason and architect in Edinburgh, ON THE OTHER PART, in manner following : THAT IS TO SAY, Whereas the said A is resolved to have a house built upon that lot of ground lying upon the north side of Castle Street, in the New Town, which is immediately to the west of the lot belonging to F, and that according to a plan thereof, signed by the parties as relative hereto, of equal date with these presents ; THEREFORE the said parties have agreed upon the following articles, viz. 1mo, That the plan subscribed by them, as aforesaid, shall regulate the manner of dividing and laying out the said house, and the several apartments, closets, and other conveniencies therein, which shall all be agreeable to the dimensions marked in the said plan. 2do, That the dimensions of the whole house shall be in front feet, and in depth feet ; both the said measurements being within walls. 3tio, That

I

That the side-walls shall be            feet thick ; that the mutual gable between the said house, and the house adjoining to it on the west, belonging to G, shall have vents in the west side thereof, which shall be constructed in the same manner as those on the east side built by D. 4<sup>to</sup>, That the front shall be of striped ashlar, and executed according to the elevation signed by the parties of this date, and the chimney-heads to be finished in the same way as those of the house belonging to G. 5<sup>to</sup>, That the wall for bearing the stair shall be of stone a foot and a half thick ; the stair to be of two flights of stone steps, polished above and below, with a moulding in front and at the ends, with a mahogany hand-rail and balusters. 6<sup>to</sup>, That all the other divisions, as marked on the plan, shall be brick and bed, with proper bindings and standards. 7<sup>mo</sup>, That the roof shall be of the best Memel wood, and best blue slates, with a broad ridge, and to have proper lights and service-windows for the garrets, and finished with lead. 8<sup>vo</sup>, That the ground floor be divided agreeably to the plan ; the back court is to be ten feet, and the area in front eight feet ; the whole of the said ground floor to be laid with broached pavement, except the west room, which is to be floored on sleepers ; the back court to be enclosed with a wall eight feet high, on each end a parapet wall            feet in height ; the catacombs to be arched with brick, and to be erected in the two  
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cellars, as marked in the plan ; a parapet wall and iron rail in the front, as in other houses : That there shall be a necessary-house with two divisions in the back area : That the front area shall have a stair to lead to the street ; and that the whole apartments in the said ground storey shall be nine feet high between floor and ceiling, and shall have proper window-shutters, doors, facings, washing boards, locks, hinges, fasteners, or latches, and two presses in the rooms and kitchen. *gno*, That the stair from the ground storey to the parlour floor shall be of stone : That the plaster of the rooms on the parlour floor, according to the divisions marked in the plan, shall be finished with hard finishing, and proper cornices : The dining-room cornices to have enrichments to correspond with the columns, capitals, and pilasters, as marked on the plan ; the dining-room to have a marble chimney-piece, and both bed-rooms to have neat enriched wooden chimney-pieces ; the dining-room to have base and furbace lining, with bound window-shutters, two inch doors and shutters, with architraves and mouldings : That in each of the two rooms in the said parlour storey there shall be a mock door, the floors deafened with brick archings below : That the vestibule or lobby shall have an arch where it opens to the stair, and that the height of the said parlour floor shall be clear between the floor and the ceiling : That the main door shall be neatly finished, as in the elevation,

vation, with a cast metal window-frame over the door. 10mo, That the whole of the staircase shall be finished with hard finishing, with a block cornice on the vestibule and top of the stair, and proper waining boards. 11mo, That the drawing-room floor be divided agreeably to the plan; the drawing-room shall be finished with hard finishing; a proper cornice and enrichments; a marble chimneypiece; with a base and furbace lining, and mock door: That the bed-room and closets in the drawing-room floor shall be finished with three-coat plaster, and the whole to have cornices: That all the apartments on this floor shall have proper doors, windows, window-shutters, architraves, base and furbace mouldings; the floors deafened, with brick archings below the hearthstones, and the height of this storey shall be thirteen feet clear between the floor and ceiling. 12mo, That the attic storey shall be divided agreeably to the plan; the apartments finished with common plaster, with proper doors, windows, window-shutters, architraves, or mouldings, base and furbace mouldings, polished stone jambs, and hearths; and the whole to have a neat cornice, or enriched moulding, with a cove, if necessary, to make the height ten feet, and the cove finished with an astragal moulding; the whole floors shall be deafened, and the chimnies arched; the whole ceilings of the house to be finished with the best three-coat plaster. 13th, That the three

principal rooms in the house shall have brass locks ; all the other rooms, closets and presses to have proper common locks. 14<sup>to</sup>, That the whole of the windows in the house shall be made of the best fir, and glazed with the best Newcastle crown glass, and properly hung, with oaken soles and keepers ; one window in each room to be double hung, and made to draw down ; and the whole to be properly and completely finished. 15<sup>to</sup>, That the whole of the stone walls, in the several rooms that are to be plastered, shall be properly lathed. 16<sup>to</sup>, That a small stair shall be made to lead from the attic storey to the garrets : That the floor shall be laid and deafened in the garrets, and fire-places made, and washing-boards ; and the whole rooms and ceilings properly plastered. WHICH house and premises the said B BINDS and OBLIGES himself, his heirs, executors and successors, that he shall build and finish, agreeably and conformably to the foresaid plan, and articles above written ; and that the whole of the work shall be executed in the best and strongest manner, and of the best and most proper materials, and the timbers well seasoned ; and if any particular shall be found to be omitted in the foregoing articles necessary to complete the house, agreeably to the plan and design, the same shall be added to the said articles, signed by the parties, and held to be a part of this contract. AND FURTHER, the said C and D, wrights in E, hereby

by BIND and OBLIGE themselves, their heirs and  
 successors, as cautioners for the said B, that in  
 the event of the said B his decease, before com-  
 pletely finishing the said house, then the same, so  
 far as remains to be executed and done at the  
 death of the said B, shall be completely finished  
 by the said D, or some other person of skill and  
 character, according to the plans and articles a-  
 bove written. AND FURTHER, the said B BINDS  
 and OBLIGES himself, and his forefaids, to dig out  
 the foundation of the said house, and carry off  
 the rubbish; and that he shall carry and make  
 proper drains from the back court, and from the  
 house to the great drain in the middle of Prince's  
 Street; and that he shall have the house com-  
 pletely finished, and deliver the keys thereof to  
 the said A, betwixt and the : AND,  
 UPON THE OTHER PART, in consideration of the  
 premises, the said A BINDS and OBLIGES himself,  
 his heirs, executors and successors, to make pay-  
 ment to the said B, his heirs, executors or assig-  
 nees, of the sum of Sterling money,  
 and that at the times, and by the proportions fol-  
 lowing; viz. at the laying of the foundation, the  
 sum of ; at laying the first joisting,  
 ; at laying the second joisting, ;  
 at laying the third joisting, ; when the  
 roof is put on, ; when all is plastered,  
 the sum of , and the remaining sum of  
 when the keys are delivered up,  
 H h 3 and

and all is finished, in terms of the above agreement, with annual rent of each of the said proportional sums from the time of payment, ay and till payment thereof. And both parties hereby agree, that in case any alterations shall be made upon the plans by the said A in the course of the work, such alterations shall be valued by themselves, and form an addition to the said stipulated sum; deducting the value of whatever part of the plan, in the opinion of tradesmen, has been thereby superseded; and in no other shape shall affect this contract, or in any degree throw it loose. AND, lastly, they BIND and OBLIGE themselves, and their forefairs, to fulfil and perform their several parts of the premises to each other, under the penalty of \_\_\_\_\_, to be paid in name of damages, without abatement, by the party failing to the party observing, or willing to do so, besides performance. And both parties CONSENT, &c. (as on page 285.)

*Contract for Building a Dike or Stone Fence.*

IT IS CONTRACTED AND AGREED upon betwixt A, ON THE ONE PART, and B, ON THE OTHER PART, in manner following: THAT IS TO SAY, the said B hereby BINDS and OBLIGES himself to build a sufficient stone and lime dike, or wall, upon the west and north sides of the grounds lately purchased by the said A from \_\_\_\_\_; which

which dike is to be six feet in height, including the copp, and two feet thick at the foundation, and finished at one foot six inches at the onsetting of the copp ; and the said B becomes bound to furnish all the materials for this work, and to make the work good and sufficient, to the satisfaction of D, architect in Edinburgh ; which dike shall be finished by the said B, on the west and north sides, betwixt and the end of September next : FOR WHICH CAUSES, and ON THE OTHER PART, the said A does hereby give liberty to the said B to quarry the stones necessary for the said wall out of ; and he BINDS and OBLIGES himself, his heirs and successors, to content and pay to the said B, at the rate of for each rood of the said dike to be built by him in manner foresaid ; of which price the said A is to pay 30l. Sterling against the 1st June next, and the like sum of 30l. at Lammas thereafter, in case there shall be either materials on the ground, or work done equal to these sums ; and the remainder of the price against the middle of September following, provided the wall be finished on the west and north sides, as above described, and to the satisfaction of the said D, or of any two persons, one to be chosen by each party : And BOTH parties BIND themselves respectively to implement each his own part of the premises to the other, under the penalty of 20l. Sterling, to be paid by the party failing to the party performing, or willing

to perform, his part of the premises, over and above performance: AND they CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation, and that letters of horning on six days charge, and all other execution necessary, may follow on a decree to be interponed hereto in common form; and, for that purpose, they CONSTITUTE.

THEIR PROCURATORS, &c,

IN WITNESS whereof, &c,

*Contract betwixt two neighbouring Heritors for Draining two Lochs, regulating the Plan of Operations, proportioning the Expense, and ascertaining the Interests of the Parties in the Ground to be recovered by their Operations, and devising Measures for Securing their Interests in a Commonly, on which Encroachments had been made.*

AT \_\_\_\_\_, IT IS CONTRACTED AND AGREED betwixt A and B, ON THE ONE and OTHER PARTS, in manner, and to the effect following: THAT IS TO SAY, Whereas the lands and barony of \_\_\_\_\_, with the parts, pertinents, and pertinents thereof, lying in the shire of \_\_\_\_\_, which belonged to the deceased \_\_\_\_\_, were disposed by him to trustees, to

to be sold for certain purposes, and were purchased by B, at the price of 5800l. Sterling, bearing interest from                   ; and for which price the said B granted two several bonds to C, cashier to the said trustees, and his successors in office; the one bond for the sum of 1469l. 8s. 1d. Sterling, payable at the term of Martinmas next, with 293l. Sterling of penalty in case of failure; and the other bond for the sum of 4330l. 11s. 11d. Sterling, payable                   , with 866l. Sterling of penalty in case of failure; and both dated                   , and bearing interest from                   ; In both which bonds, as the trustees required a cautioner for the price, the said A became bound, jointly and severally, as cautioner for the said B, and obtained from him an obligation of relief, which is contained *in gremio* of the said bonds, granted for the price of the said barony: And whereas the said B, the purchaser of the said lands, finding, on a review of his circumstances, that it would be inconvenient for him to hold the whole of the said barony, proposed to the said A, that he should purchase part thereof from him, at the same rate that he himself had bought the said lands; and the said A having agreed to the transaction, the parties, after viewing and perambulating the lands, set off the following parts of the said lands and barony, viz.                   , which, at the same rate at which the whole was purchased, are worth 1469l. 8s. 1d. Sterling, the  
same



same were agreed to be purchased by the said A ; who has accordingly, of this date, obtained a disposition thereof from B, bearing the said A's entry to be the same with that of the said B to the other parts of the said lands and estate ; and which disposition contains all the usual clauses, with warrandice from the said B's fact and deed, as specially agreed on betwixt the said parties : And in respect this disposition by B to A acknowledges the receipt of the price, which is not yet paid by the said A, he has granted a bond of relief to the said B, obliging himself, with his own money, to retire the foresaid bond of 1469l. 8s. 1d. Sterling, granted by them jointly ; and wherein the said A was originally only a cautioner to the said trustees and their cashier, and to free and relieve the said B of the same : AND SEEING that, amongst other parts of the said barony, disposed by B to the said A, there is specially comprehended the just and equal half of the two lochs of \_\_\_\_\_, lying next and most contiguous to the purchase of the said A, and the other half of the said two lochs, lying next and most contiguous to the rest of the said barony, are reserved to the said B ; AND THAT there is reason to believe that the said two lochs are capable of being drained and rendered arable, or, at least, meadow ground, to the advantage of both parties : AND SEEING, FURTHER, that great encroachments have been made, as the parties are informed, by E and his tenants, in the  
moss

moor of \_\_\_\_\_, which properly belongs to that part of the lands disposed to the said A, but over which the tenants of eight ploughs of the rest of the barony of \_\_\_\_\_ are still to have a tolerance or liberty of peats and firing, as reserved to them, in terms of the said disposition by the said B to the said A; and that it is therefore the mutual interest of the said parties to vindicate their right in the said moor: AND the said parties taking the premises into consideration, and having a mutual friendship and confidence in each other, have resolved to become bound in manner underwritten; AND ACCORDINGLY have BOUND and OBLIGED themselves to one another, and their respective heirs and successors in the said lands, as follows: To wit, THAT they shall each of them contribute the sum of 50l. Sterling, as the same shall be required, for draining, or attempting to drain, the said two lochs of \_\_\_\_\_, and reducing the same, as far as it is practicable, to arable or meadow ground, and that from time to time, betwixt and the \_\_\_\_\_; and that the draining and improving shall begin as soon as the consent of the neighbouring heritors can be obtained, for making drains, ditches, or aqueducts through their grounds, for carrying off the water of the said lochs; and both parties shall use their endeavours for obtaining this consent; and the work shall thenceforth be carried on, till the said sum of 50l. Sterling to be advanced by each, making  
ing

ing in all 100l. Sterling, shall be expended thereon : And in case they shall succeed in the said attempt of draining the said two lochs, or any parts thereof, the same, or such parts thereof as shall be recovered, shall be equally divided betwixt the said parties, in quantity and quality, by a land-measurer of skill, and the half thereof lying nearest to that part of the barony belonging to A, shall be allocated to him, as his property, and the half thereof lying nearest to the rest of the said barony shall be allocated and set apart to the said B ; and the residue of the said two lochs remaining undrained (if any part of either shall remain undrained) shall continue the property of the parties respectively, in terms of the foresaid disposition by the said B to the said A, in all time thereafter ; or in case this attempt shall prove entirely abortive, the property of the said two lochs shall, in that case, remain the property of the said parties respectively, as settled by the said disposition, in the same manner as if this agreement had never been entered into : And in regard the said A resides in the neighbourhood of the said two lochs, he engages to oversee the progress of the work, and to take the trouble of directing and paying the workmen, and to keep the account of the expense attending the operations ; which account the said B is to admit on his word without further evidence ; and he shall approve of all the directions which the said A, *bona fide*, may give for conducting

ducting the said work ; and he shall further lodge in the hands of the said A, from time to time, such parts of his share of the said expense (in whole not exceeding the said 50l. Sterling) as shall be required, till the said work shall be finished, or given up of mutual consent ; AND whatever reasonable engagements the said A shall come under to any neighbouring heritor through whose grounds the ditches or drains may pass, or be drawn, in order to advance the work, the said B shall ratify and homologate, and the said engagements shall bind both parties equally : AND FURTHER, in case, after maturely considering the nature of the encroachments on the said mofs of , and taking the opinion of counsel in the matter, it shall be deemed for the advantage of the parties to vindicate their right in the said mofs by law, they oblige themselves, and their forefairs, to concur in carrying on before the Court of Session, or other proper judicature, a process of declarator, or molestation and damages, against the neighbouring heritors who may have encroached on the said mofs of , and to prosecute the same to the final conclusion thereof, and to advance each of them an equal share of all charges and expenses attending the said process, extracting acts and decrees, or leading proofs, or otherwise. AND FURTHER, in regard the trustees of the said , grantors of the foresaid disposition of the barony of , have, by a separate obligation relative

lative thereto, and of the same date therewith, become bound, at the sight, and by the advice of , to establish in their persons, by adjudication, charter and investment, proper and habile titles to the said lands and estate of , which belonged to the said , and thereupon immediately to grant real warrandice over the same in favour of the said B, in further security of the said barony of , the said B hereby becomes bound to communicate and convey to the said A, in a habile manner, the said right of real warrandice, when obtained, in further security of the parts and portions of the said lands disposed by the said B to him, and that on their joint expense. AND LASTLY, in case any difference shall arise betwixt the said parties in regard to this agreement, or on the meaning, import, or execution, of any of the clauses and obligations herein contained, they hereby submit and refer the determination thereof to L; and, failing him by death, to M; and whatever one or other of the said referees shall decide in the matter brought before them, shall be binding on both the said parties, and on their heirs respectively: Neither shall this friendly reference expire by the death of either party, but shall subsist against their heirs, till all the foresaid debateable matters thereby intended to be prevented from becoming the subject of litigation in a court of law, shall be settled and determined:

terminated : AND BOTH PARTIES bind and oblige them to perform their respective parts of the premises, and that under the penalty of 50l. Sterling of liquidated penalty, to be paid by the party failing to the party performing, or willing to perform, and that over and above performance : AND both parties CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on six days charge, and all other execution necessary, may follow on a decree to be interponed hereto in common form ; and, for that purpose, constitute

THEIR PROCURATORS, &c. IN WITNESS whereof, &c.

*Contract betwixt a Proprietor of Coal Works and a Manufacturing Company.*

IT IS CONTRACTED, AGREED and ENDED between the parties following, viz. A, heritable proprietor of the lands and others after described, ON THE ONE PART, and C and F, ON THE OTHER PART, in manner following ; THAT IS TO SAY, WHEREAS the said C and F having, by proper trials and experiments, found that, upon the grounds and estate of M, belonging in property to the said A, there are several seams of coal ; and they having erected a manufactory in  
that

that neighbourhood, for the purpose of manufacturing iron, are desirous of having the works properly supplied with coal, and other fuel; and the said A being willing to enter into a contract for that purpose, he therefore hereby SELLS, and BINDS and OBLIGES himself, his heirs and successors, to furnish to the said C and F, and to any other partners who may be assumed by them into the said concern, and their successors, weekly, and each week, during the period of years, being the term of endurance of their lease of the ground whereon their works are erected, the full and entire quantity of sixty tons of coals, ten tons less or more, each ton consisting of twenty hundred lib. weight, at one hundred and twelve English futtle pounds, provided there be coal in the pits capable of being wrought sufficient to answer the demand; three fourth parts of which quantity so to be delivered weekly, being great coal, and the other fourth part chow, or small coal, to be all digged and raised, in the option of the said lessees, out of the seam called the gin-seam, or out of the seam called the five-foot coal, as shall be found upon trial to answer their purposes best; and the said C and F, and their forebears, shall, by a letter under his or their hand, certify to the said A the option they shall make, and shall thereafter be obliged to hold by the same, unless the said seam be wrought out and exhausted, or that the present level cannot  
clear

clear it of water ; but if either of these cases shall happen, the lessees shall thereafter accept of the coal digged and raised out of the other remaining seam ; and which quantity of sixty tons great and chow coals, the said A and his forefaids shall deliver, or cause to be delivered weekly, during the continuance of the foresaid lease, and as long as the coal can be obtained, by the proportions afore said, to the said C and F, and partners to be assumed by them, and their successors afore said, or to such overseer or agent as they shall authorise to receive the same, at or upon the bank of the pit, from which the said coal shall be raised ; and in case the said C, F, and partners, and their said works, shall consume weekly more than the quantity of coal above mentioned, they are hereby obliged to take what more coal shall be wanted from the said A and his successors, who shall furnish the same, to the extent of the produce of the foresaid two seams of coal, at the prices, and in the terms above and after mentioned : AND WHEREAS, by many unforeseen and temporary accidents attending the working of all coals, such as the rising of water, the repairing or altering the machinery, the desertion or want of colliers, or the failure of the coal itself, it may not be in the power of the said A, or his forefaids, to deliver the foresaid weekly quantity of coal, or at least not at the precise stipulated time ; IT IS THEREFORE hereby expressly agreed upon, that, in such

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case, the not delivery of the whole stipulated quantity, shall infer no breach of this contract against the said A or his successors, or subject them to any forfeiture or penalty whatsoever, they always delivering, in the mean time, what coal shall be raised from the said two seams, and making up the deficiency the subsequent or following weeks, according as coal shall happen to be raised out of either of the said two seams, or with coal of equal quality raised out of any other seam in the said estate that shall be working for the time ; but it shall not be lawful to the said A, or his forefairs, to sell any coal raised out of the foresaid two seams ; and failing of them, out of any other seams of coal belonging to him upon the said estate, which may be working for the time, so as thereby to occasion a failure or deficiency in the foresaid weekly quantity of coals, or what further quantity shall be necessary and demanded for the use of the said manufactory : It being hereby expressly stipulated, that the quantity of coal agreed to be so furnished for the use of the Company and their manufactory, shall, every week as they are raised, be set in heaps or bingsteads by themselves, upon the bank of the pit, with as much more coals as shall make up the deficiency as aforesaid, and there to remain upon the risk of the Company until the same be carried off by them ; and the said A hereby grants full power and liberty to the foresaid C and F, and the partners to be

be assumed by them, and their forefaids, to transport and carry the said coals during the said lease, on such carts and carriages as they shall think most proper, by the most commodious ways and passages through his lands and estate, with the exception always above mentioned; and to repair the said roads, or alter the same, and make new roads more convenient from time to time, as the same shall be found necessary; and to allow them to take stones, earth and gravel for repairing the said roads, where the same may be most conveniently had, and least prejudicial to the said A's grounds, they paying the value of the damages, to be ascertained in manner after expressed. FOR WHICH CAUSES, and ON THE OTHER PART, the said C and F, by these presents, BIND and OBLIGE themselves, and the person or persons who shall be assumed by them as partners in the premises, and his and their heirs, executors and successors, to take and receive weekly, upon the bank of the the foresaid coal-pit, the said quantity of sixty tons of coal, ten tons less or more, or what further quantity of coals shall be necessary, and used or consumed by the aforesaid Company in carrying on their works, and shall clear the banks thereof regularly, at least before every quarter-day, of all the coal that shall have been therein laid in the terms above mentioned, and shall pay the price of the foresaid coal to the said A, and his forefaids, as follows, viz. for each ton of coal that shall be

so furnished, during the first twenty years of the foresaid lease, the sum of 4s. ; and for each ton of the said coal that shall be furnished during the second twenty years of the said lease, the sum of 4s. 10d. ; and for each ton of the said coal that shall be furnished, as aforesaid, during the remainder of the said lease, the sum of 5s., all Sterling money, and that at the foresaid coal-works, or within the said Royal Bank office in Edinburgh, quarterly, the first lawful day of each of the months of : But in respect that the Company may probably not have use for the said full quantity of coals for some time after their entry, it is agreed upon, that they shall be obliged only to receive and pay for whatever quantity of coals they shall have use for, betwixt their entry to the lease and the time of setting their furnace a-going, providing the same do not exceed twelve months, and that the price of the coal delivered and received in that time shall be paid quarterly, as aforesaid ; but that from and after the expiration of the said nine months, whether the furnace shall be then set to work or not, or from whatever time within the nine months the furnace shall be set to work, C and F, and their partners, and Company aforesaid, shall, and are hereby obliged to accept and receive weekly, during the lease, the said full quantity of sixty tons, of great and chow coals, by the proportions aforesaid, ten tons less or more, and pay the foresaid

said price for the same, quarterly, on the first day of each of the said months, with a fifth part more of penalty for each term's failure, and legal interest of the price from the respective terms of payment thereof; and that the quantity of coals in the several events aforesaid, shall be ascertained by receipts under the hands of the persons appointed and authorised from time to time by the said Company to receive the same; and in case the said Company shall neglect or omit to name and employ persons to receive the coals weekly, or if such persons shall refuse or neglect to receive the same, or to grant receipts for the coal, then, and in all or either of these cases, it shall be lawful to the said A and his forefairs, by themselves or their overseers, or coal-grievs, authorised by them for that purpose, to tender and offer upon the bank of the pit, before two credible witnesses, the stipulated quantity of coals, and to build and leave the same, in bing-steads thereupon; and the said griev or overseer's book, together with his own, and the said two witnesses declarations thereof, shall be held and sustained as legal evidence of the same, and shall entitle the said A, and his forefairs, to charge for the payment of the full quantity of coals so offered or led, or built on the bank each quarter-day, as fully and freely as if receipts had been given for the same by receivers appointed by the Company: And whatever part of the said quantity of coals shall remain upon the

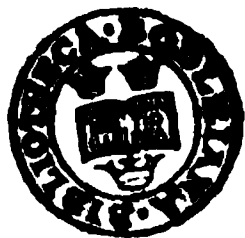
bank uncarried off at the end of any quarter, the Company shall remove and carry off the same the beginning of next quarter, before any of the coals of that quarter : And it is moreover stipulated and agreed, that the said C and F, and their partners, and Company aforesaid, shall be BOUND and OBLIGED, and hereby BIND and OBLIGE themselves to contribute and pay a proportional share for working and repairing the road to M, corresponding to the number and weight of the carriages that shall be used by them upon the said road : AND ALSO to pay the whole damages, annual and perpetual, that shall be done by them to the grounds, corn and grafs of the said A, and his tenants and feuers, or either of them aforesaid, in transporting the same, and the coal or other necessaries for their works, upon the foresaid roads and passages, or cutting canals or water leads as aforesaid, or making the said river of D navigable ; together with the value and price of the peats that shall be digged and taken by them from the foresaid mosses in the said lands of M, as the said particulars shall be settled, determined and ascertained by two neutral persons of character, to be mutually named as arbiters by the parties, for that purpose ; and in case of difference betwixt the arbiters, by an oversman to be chosen by the arbiters themselves ; and, failing of the nomination or acceptance of such arbiters or oversman, by the Sheriff-depute of the county of N  
for

for the time being : AND it is hereby also covenanted and agreed, that it shall not be lawful to the said C and F, and the partners and Company aforesaid, either in their own names, or in the name of any other person or persons for their behoof, or any other manner of way whatsoever, to purchase, procure, take, or obtain a right to any of the foresaid grounds of the foresaid estate of M during the currency of the said lease ; which rights to be so procured, are hereby declared void and null ; at least, the said C and F, and their partners and Company, or either of them, taking or procuring a right or purchase to any of those feus, shall be, and hereby are become BOUND and OBLIGED to make over and transfer the same to the said A and his foresaids, in case they shall desire it, for payment of the price at which the said feus shall have been so purchased ; and if the Company, or their servants, in the course of digging or searching for coal, or in any other manner of way during the foresaid lease, shall happen to find or discover any other kind of mineral or metal in the grounds of the estate of M, they shall and do hereby oblige themselves to make known the same to the said A and his foresaids, to whom the same is declared to belong, and to which the said Company shall have no right or title : AND it is hereby expressly concerted, stipulated and agreed, that the said C and F shall, within fifteen kalendar months from this date,

procure a company of partners, habite and repute responfal for the time, who shall subscribe 6000l. Sterling, to be applied as a capital stock for erecting and carrying on the foresaid iron-work in the manner above expressed; and they hereby BIND and OBLIGE themselves and their foresaids, that they and the said Company shall, within the foresaid space of fifteen months, renew this present contract with the said A, and become personally bound, conjunctly and severally, to fulfil and perform to him, and his foresaids, the whole obligations, prestations, payments and conditions hereby incumbent upon the said C and F, and their foresaids; and which contract to be so entered into, shall contain an obligation upon both parties to implement and fulfil the same to each other, under the penalty of 200l. Sterling, to be paid by the party failing to the party observing, or willing to observe, over and above performance: AND the said A BINDS and OBLIGES himself and his foresaids, to subscribe the said new contract in the foresaid terms, when he shall be thereto required, at any time within the said fifteen months; BUT DECLARING ALWAYS, as it is hereby provided and declared, that if the said C and F shall fail in procuring the said Company, qualified as aforesaid, within the said fifteen months, then, and in that case, this present contract is to be void and null to all intents and purposes, and no more binding upon either party than

than if the same had never been entered into or executed. And both parties CONSENT to the REGISTRATION, &c.

*Contract for Building a Ship.*



IT IS CONTRACTED AND AGREED betwixt the parties following; viz. A, merchant in C, UPON THE ONE PART, and B, shipbuilder in E, UPON THE OTHER PART, in manner, and to the effect following; THAT IS TO SAY, Whereas the said A wishes to have built for him a ship or vessel of the size of three hundred tons, carpenter's measure, or thereabouts, of the draught of feet water, of the length of from stem to stern, square rigged, of oak plank, and well found in every particular, and which the said B has agreed to do within the time after specified; THEREFORE the said B does hereby covenant and agree forthwith to put upon the stocks a vessel of the dimensions before specified, and to have her ready for sea, in the most complete and substantial manner (at least, so far as incumbent upon him as carpenter), by the day of next. FOR WHICH CAUSE, and ON THE OTHER PART, the said A doth hereby covenant and agree to make payment to the said B, his heirs, executors or assignees, of the sum of , as the agreed price of the said ship or vessel, payable



able by the proportions following, viz. one-third thereof when the keel is laid; another third thereof when launched; and the remaining third when cleared out at the customhouse of G, for her first voyage; with interest of these different proportions from the times respectively before specified, during the not payment. And it is hereby mutually covenanted and agreed, that in case any difference shall arise betwixt the parties anent the sufficiency of the workmanship, or the import and meaning of this agreement, that the same shall be referred to two neutral persons, to be mutually chosen, who, in case of variance, shall have it in their power to choose an oversman. And both parties BIND and OBLIGE themselves, their heirs, executors and successors, to implement and perform the premises to each other, under the penalty of \_\_\_\_\_, to be paid by the party failing to the party observing, or willing to observe, over and above performance. And both parties CONSENT to the REGISTRATION, &c.

*Policy of Insurance on a Life.*

IN THE NAME OF GOD, AMEN. We subscribers do, by these presents, ASSURE, to and in favour of B, 500l. Sterling, upon the natural life of A, aged about twenty-one years, for and during the space of four years from the 14th day of March

1794,

1794, to the 14th day of March 1798 years, both days inclusive: AND IT IS DECLARED, that this insurance is made to and for the use, benefit and security of the said B, in case of the death of the said A, which we allow to be a good and sufficient inducement for making this insurance; and do agree, that the life of the said A is, and shall be rated and valued at the sum insured, without any further account to be given to us for the same: WE the said subscribers, for and in consideration of twenty-three guineas per hundred pounds Sterling, do hereby BIND and OBLIGE ourselves severally, and our several heirs, executors and administrators, and not one for the other, or for the heirs, executors and administrators of one another, that in case he, the said A, shall in, or during the said time, and before the full end and expiry thereof, happen to die or decease out of this world, by any way or means whatsoever, suicide and the hands of justice always excepted, that then we the said subscribers will well and truly satisfy, content and pay unto the said B, his executors, administrators or assignees, the sum or sums of money by us underwrote, according to the sums annexed to our respective subscriptions, without any deduction or abatement whatever, except the premium; at the same time, we do agree to accept of the premium annually, the first year at the rate of eight guineas per cent., and the other three years at the rate of five guineas per cent. And in case of failure in  
the

the payment of the premium annually, on or before the 14th day of March, this policy is to be void and null.

*Policy of Insurance upon a Ship and Goods.*

WE SUBSCRIBERS do, by these presents, assure to and in favour of \_\_\_\_\_, the several sums of money annexed to our respective subscriptions, upon the body, tackle and apparel, of and in the good ship or vessel called the Margaret, burden 300 tons or thereby, whereof B is master, and also upon any kind of goods laden, or to be laden, on board said ship, for this present voyage, or whoever else shall go master in the said ship, or by whatever other name the said ship or master thereof is or shall be called, beginning the adventure upon the said ship at and from C, and upon the said goods from and immediately following the loading thereof on board said ship there, and to continue and endure until said ship with said goods shall arrive in safety in the port or harbour of D, and said goods be there safely landed; and further, upon said ship, during her abode there, and from thence until she arrives in any port or harbour in the Frith of Forth; and in case of loss, the assurers oblige themselves to make good the same, each one according to the rate and quantity of his sum herein assured, in manner after-mentioned.

mentioned. Touching the adventures and perils, which we the assurers are contented to bear, and and do take upon us in this voyage; they are of the sea, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermarts, surprisals, takings at sea, arrests, restraints, and detrainments of all kings, princes, or people, of what nation, condition or quality soever, barratry of the master or mariners, and all other perils, losses or misfortunes, that have or shall come to the hurt, detriment or damage of the said ship and goods, or any part thereof, during this adventure: And in case of any misfortune or loss, it shall be lawful for the assured, their factors, servants and assigns, to sue, labour, and travel for, in, and about the defence, safeguard, and recovery of the said ship and goods, or any part thereof, without prejudice to this assurance, to the charges whereof we the assurers will contribute each for ourselves, according to the respective sums assured by us. AND it is agreed by us the assurers, that this writing or policy of assurance, shall be of as much force and effect as the surest writing or policy of assurance, made in the Royal Exchange, or elsewhere in London; and so we the assurers do hereby bind and oblige us, each of us for ourselves, our heirs, executors and successors, conform to the sums of money underwritten by us,

to the said A, his heirs, executors and assigns, to the true performance of the premises ; confessing ourselves paid the consideration due to us for this assurance, at and after the rate of 1l. 10s. on ship, and 1l. 5s. on goods, per 100l. Sterling : \* And it is hereby agreed, that in case any dispute or difference shall arise relating to a loss on this policy, it shall be referred to two merchants, one to be chosen by the assured, and the other by the assurers, who shall have full power to adjust the same, and, in case of their not agreeing, then they shall chuse a third person to be overman and umpire between them ; any two of which agreeing, their sentence and award shall be binding on both parties. IN WITNESS WHEREOF, we the assurers have subscribed our names and sums assured in Edinburgh, of the date annexed to our subscriptions.

N. B. Corn, seed, salt, fish, fruit, flour, and provisions of all kinds, that are in their nature perishable, are warranted free from all average, unless general, or the ship be stranded ; and all other goods, the ship and freight, are warranted free from average, under five pounds per cent., unless general, or the ship be stranded.

*The*

---

\* The premium will naturally vary according to the risk.

*The Policy signed is as follows.*

*Edinburgh, June 10. 1811. L. 20. Twenty*  
*pounds Sterling on ship and goods. C.*

*Edinburgh, June 11. 1811. L. 40 on ship.*  
*D.*

This closes the subject of Contracts; and, having sufficiently explained the forms of heritable and moveable rights *inter vivos*, I proceed, in the next volume, to Deeds *mortis causa*, or by which the succession of property is regulated, or the rights of heirs completed.



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END OF VOLUME FOURTH.

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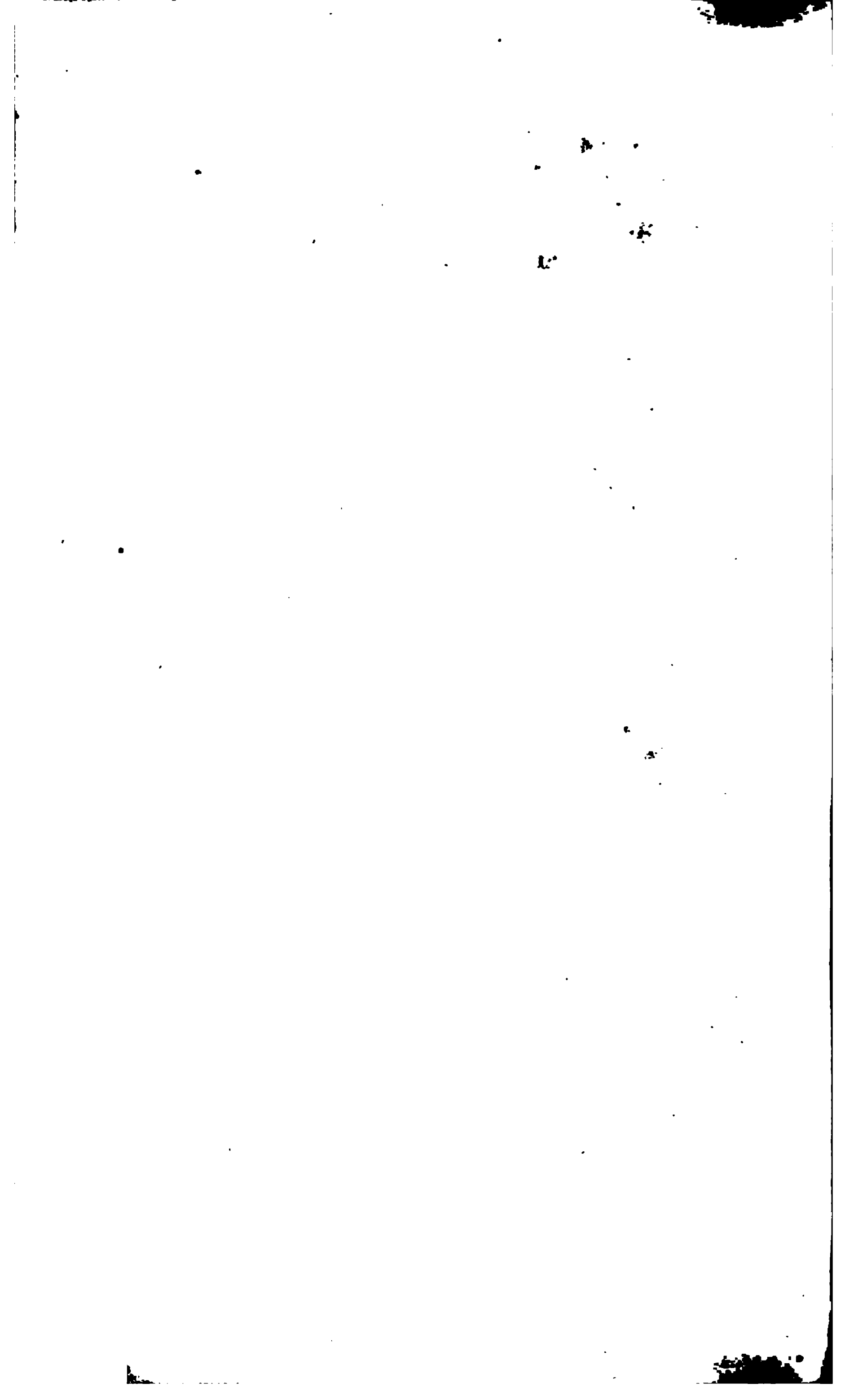
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